

**EXAMINING TAX-EXEMPT PRIVATE ACTIVITY
BONDS FOR ALL ABOARD FLORIDA'S BRIGHTLINE
PASSENGER RAIL SYSTEM**

HEARING
BEFORE THE
SUBCOMMITTEE ON
GOVERNMENT OPERATIONS
OF THE
COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES
ONE HUNDRED FIFTEENTH CONGRESS
SECOND SESSION

APRIL 19, 2018

Serial No. 115-109

Printed for the use of the Committee on Oversight and Government Reform



Available via the World Wide Web: <http://www.govinfo.gov>
<http://oversight.house.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

32-931 PDF

WASHINGTON : 2018

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EXAMINING TAX-EXEMPT PRIVATE ACTIVITY BONDS FOR ALL ABOARD FLORIDA'S BRIGHTLINE PASSENGER RAIL SYSTEM

Thursday, April 19, 2018

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT OPERATIONS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:06 a.m., in Room 2154, Rayburn House Office Building, Hon. Mark Meadows [chairman of the subcommittee] presiding.

Present: Representatives Meadows and Connolly.

Also Present: Representatives Mast and Posey.

Mr. MEADOWS. The Subcommittee on Government Operations will come to order. And without objection, the chair is authorized to declare a recess at any time. And the chair notes the presence today of Congressman Bill Posey of Florida and Congressman Bryan Mast of Florida.

We appreciate both of you and your interest in this particular topic. We welcome your participation.

I ask unanimous consent that Congressman Posey and Congressman Mast be permitted to fully participate in today's hearing.

Mr. CONNOLLY. No objection, Mr. Chairman.

Mr. MEADOWS. I thank the gentleman from Virginia. So without objection, it is so ordered.

I am pleased to hold this oversight hearing to examine the use of tax-exempt private activity bonds for All Aboard Florida's Brightline project.

It is a pleasure to welcome the local stakeholders and experts on this issue. I thank you all for joining us here today.

And as you know, this committee is charged with uncovering and exposing waste, fraud, and abuse within the Federal Government. And as some of you may have seen in the news, the safety of the Brightline train issue raises grave safety concerns. And tragically, some 6 people have been killed by Brightline trains since they began trial runs last year.

And so due to some of the public safety concerns, some of my colleagues, including Congressman Mast, have raised these concerns related to the eligibility of a private sector entity like Brightline to receive Federal assistance. And so as stewards of the taxpayer dollars, we take these concerns seriously.

In 2017, All Aboard Florida applied for two allocations of a tax-exempt private activity bond totaling \$1.75 billion. These bonds

would be used to fund its Brightline passenger rail project. And after reviewing the request, DOT approved both applications and deemed the bonds eligible for tax-exempt status.

However, questions remain as to whether the project was, in fact, eligible to receive this type of funding. And this is especially concerning for a number of reasons.

So, obviously, we'll get to hear some of the testimony today as it relates to the Title 23 funds and when those were received for this particular issue, because that's one of the components, certainly, of getting the private activity bond. And additionally, I look forward to the testimony from all of you.

But with that, I would like to yield the remaining time for my opening statement to the gentleman from Florida, Mr. Mast.

Mr. MAST. Thank you, Mr. Chairman, for holding this hearing, for your work on rooting out waste, fraud, and abuse in the Federal Government.

I could tell you one of the issues that I do hear about most frequently from my constituents are the physical and economic danger that are posed by the Brightline expansion into the Treasure Coast.

There are numerous issues that deserve scrutiny when it comes to this expansion. On February 15, my committee of Transportation and Infrastructure had the opportunity to ask the National Transportation Safety Board, also the Federal Railroad Administration, about many of these issues. And the FRA indicated that they are also very concerned about these safety issues, including the deaths, some of them by suicide, that have been as a result of this train.

Now, let me just start by saying, I am a supporter of private activity bonds. There are numerous important project, good projects that Congress has specifically intended to provide the option of private activity bonds for. There's a list of them up on the board right there.

Airport, docks, wharfs, mass commuting facilities, facilities for furnishing water, sewage facilities, solid waste disposal, residential projects, furnishing electronic and energy and gas, heating, cooling facilities, hazardous waste facilities, environmental enhancements of hydroelectric-generating facilities, and qualified public educational facilities, green building and sustainable design projects.

There are two additional categories. The first is high-speed intercity rail facilities, which Congress defines as a railway using vehicles that are reasonably expected to be capable of obtaining a speed in excess of 150 miles per hour. In other words, if Brightline wants to use tax-exempt bonds, they have to have the capability to run their trains in excess of 150 miles per hour. But they don't.

So Brightline has, instead, sought to circumvent this congressional intent by claiming that they qualify as a highway. We'll get into the theory of this claim in this hearing, but I do think we can all agree that based on any common understanding of the word "highway," this train does not meet that definition.

I do believe that if Congress had intended to provide private activity bonds for a passenger train traveling 80 to 110 miles per hour, as Brightline does, then Congress would have laid that out. They would have just said so. And any other interpretation is an affront to the American taxpayer.

And in that, I thank you for the time to speak Mr. Chairman, and I yield back.

Mr. MEADOWS. I thank the gentleman.

In my remaining 35 seconds, I would like to thank the ranking member. As many of you know, we are not actually voting today, and what that normally means is that everybody is out of town almost immediately. And so the ranking member was gracious enough to continue on with this hearing. And I would like to personally thank him.

And I recognize him for his opening statement.

Mr. CONNOLLY. I thank the chair for ever being gracious. And I'm very well aware of the fact that for some of our colleagues, this obviously has great impact. And so we wanted to make sure that that was a possibility today. But I thank the chair.

As a former local government official, I recognize some of the aspects of this issue in this hearing. In fact, it almost feels like I'm back in my old boardroom in Fairfax County.

What we have here is a local dispute between a new transportation facility, in this case Brightline passenger rail, and the communities that object to building the facility in their backyards. That's the kind of dispute I dealt with countless times as the chairman of one of the larger counties in the United States.

No case is ever easy, but what we always hope for is a resolution that balances the interests of the community with the need to make necessary transportation improvements. And that's what I hope ultimately happens in this case.

As Federal overseers, we also have a responsibility to ensure that projects using government funding or financing mechanisms are held to high safety standards and, in fact, meet the statutory terms of the program as set by Congress.

This hearing appears to focus on a local dispute which is currently subject to litigation. The witnesses are the parties to the litigation, and the testimony they're offering tracks closely with their legal briefs.

Of course, we're not a court of law here, and nothing that happens here will affect the eventual outcome of the litigation itself, nor is this hearing intended to do so, nor should it.

However, I think the hearing raises some issues that should be relevant to President Trump, though perhaps not in the way my friends on the other side of the aisle intend.

I believe we can all agree the country's infrastructure is in an appalling state of disrepair. The state of our infrastructure is so bad that the American Society of Civil Engineers gave the country an overall D-plus, D-plus. Although our rail systems scored a B, the Society stated that, quote, "U.S. rail still faces clear challenges, most notably in passenger rail, which faces the dual problems of aging infrastructure and insufficient funding."

The dispute at the center of the lawsuit is how a major passenger rail infrastructure project in Florida is funded. The project is privately owned and operated. It's funded by private investors who receive tax exemptions for the income they earn from their investments in the railroad. The financing vehicle is called private activity bonds, PABs.

Two Florida counties and a group of homeowners in Florida's Treasure Coast want to stop the project. They're saying, in effect, "Not in my backyard," and they have gone to court to contest the appropriateness of the use of PABs for this infrastructure project.

Here is why this Florida dispute should matter to President Trump. President Trump's infrastructure plan abandoned the long tradition of public funding of major infrastructure projects. Instead, he relies significantly upon the private sector to finance the cost and upgrading of infrastructure. As is the case with this passenger rail project in Florida, PABs are a key part of the financing option that the Federal Government uses to incentivize private sector investment in infrastructure. The Trump plan depends upon them.

So it's not too much of a stretch to say that if this hearing and the accusations of crony capitalism based on government-supported financing mechanisms can in fact stop a private passenger rail project in Florida from using tax-exempt bonds intended to incentivize private investment in infrastructure, then President Trump's plan to rely on those same instruments, that is to say PABs, for infrastructure projects across the country could also be stopped in a similar way.

In a way, then, it's the Trump infrastructure plan that's also before us today.

Isn't it ironic that the loudest critics are likely to be in the President's own party and probably believe in private ownership and private investment of infrastructure, just not in this backyard.

I have no opinion one way or the other about whether this passenger train should be built in Florida or whether the mechanism used to finance it is appropriate. I am, however, skeptical that the Nation can rely entirely on these private instruments of finance to repair and improve our aging infrastructure. And I'm doubtful that the President's privately funded infrastructure plan will ever be anything more than another campaign promise.

I have a suspicion this hearing will shine the light on the Achilles' heel of that infrastructure plan because it will demonstrate that private financing alone is not a panacea, something that will become more clear every time someone in this hearing attacks Brightline for taking advantage of existing tax-exempt bonds.

So I think in many ways this hearing is more than about a rail line in Florida. It actually sheds light on how we're going to approach the whole issue of our Nation's infrastructure, which is so critical. And for that, I thank the chair for bringing us together to do that just that.

With that, I look forward to hearing the testimony.

Thank you, Mr. Chairman.

Mr. MEADOWS. I thank the gentleman for his opening remarks.

I'm pleased to introduce the witnesses. We have Mr. Grover Burthey, deputy assistant secretary for policy at the Department of Transportation.

Welcome.

Mr. Patrick Goddard, president and chief operating officer of Brightline All Aboard Florida.

Welcome, Mr. Goddard.

Mr. Robert Crandall, former chairman and CEO of American Airlines.

Welcome, Mr. Crandall.

Chief Dan Wouters, division chief of the Emergency Management of Martin County Fire Rescue.

Welcome, Chief.

And Mr. Dylan Reingold, county attorney for Indian River County.

Welcome.

And pursuant to committee rules, all witnesses will be sworn in before they testify, so if you would please stand and raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

All right. You may be seated.

Please, the record will reflect that all witnesses answered in the affirmative.

In order to allow time for discussion, I would ask that you please limit your testimony, your oral testimony to 5 minutes, but your entire written testimony will be made part of the record.

And as a reminder, there is a clock in front of you. And so as you're looking at that clock it should have a countdown. But as it turns yellow, that means you need to prepare your closing remarks. And as it turns red, it'll start with a gentle tap and a harder gavel if you continue to go beyond the 5 minutes.

But with that, if you'll remember to press the red talk button, that will turn red when you press it.

You're recognized, Mr. Burtthey, for 5 minutes.

WITNESS STATEMENTS

STATEMENT OF GROVER BURTHEY

Mr. BURTHEY. Chairman Meadows, Ranking Member Connolly, and members of the subcommittee, thank you for the opportunity to testify today.

My name is Grover Burtthey, and I'm the deputy assistant secretary for transportation policy in the Office of the Under Secretary at the United States Department of Transportation.

In my role at the Department, I oversee both the Office of Infrastructure Finance and Innovation, as well as the Build America Bureau, the entities with historical and current responsibility managing the private activity bond allocation process.

As you are aware, private activity bonds, or PABs, are a category of bonds issued by State or local governments to private investors. The interest on State or local bonds is normally not subject to Federal taxation. But if State or local bonds are used to fund a private project, the interest is only tax-exempt if the bonds fit into one of several categories, including the category of exempt facility bonds at issue here.

Private activity bonds are a valuable tool in facilitating private investment in transportation infrastructure. Extending tax incentives to privately financed projects or facilities that are similar to those enjoyed by publicly financed projects or facilities helps to level the playing field and encourages increased private investment in transportation infrastructure.

Section 142 of Title 26, the Internal Revenue Code, defines several different categories of exempt facilities, including multiple categories of transportation facilities which may be financed using PABs.

Many of these categories are subject to annual volume caps set by the statute and administered at the State level, while others are not limited in volume at all. Airports, docks and wharves, mass commuting facilities, and high-speed intercity rail facilities all fall into one of those categories with a volume cap.

Qualified highway and surface freight transfer facilities, a category established in 2005 by SAFETEA-LU legislation, is unique in that it is subject to a nationwide volume cap of \$15 billion, which the Secretary of Transportation is directed to allocate in such a manner as the Secretary determines to be appropriate.

From enactment until today, approximately \$8.25 billion of this volume cap has been issued, while an additional amount of approximately \$2.8 billion is currently allocated.

The statute authorizing this category, 26 U.S. Code 142(m), defines qualified highway or surface freight transfer facility to mean, among other things, any surface transportation project which receives Federal assistance under Title 23. The Department has consistently understood this language to mean any surface transportation project which receives assistance from Title 23, not limited to highways, is eligible for private activity bond issuance.

All Aboard Florida originally applied for an allocation of \$1.75 billion in PAB authority for both Phase 1 and Phase 2 of their project, later named Brightline, in August of 2014. Brightline Phase 1 is a passenger rail service from Miami to West Palm Beach, and Phase 2 would extend the service to Orlando International Airport.

The application indicated that in the time since the planning process for the All Aboard Florida project had begun, the Florida Department of Transportation has spent Title 23 funds improving railway-highway grade crossings along the project corridor.

Based on these expenditures, the Department determined that the All Aboard Florida project was a surface transportation project which receives Federal assistance under Title 23, and it therefore qualified for a private activity bond allocation under 26 U.S. Code 142(m)(1)(A).

The Department issued an allocation letter in December of 2014. The Department acted subsequently to extend that allocation twice.

In September of 2016, All Aboard Florida submitted a new application requesting a \$600 million application for Phase 1 of the Brightline projects. It simultaneously requested that the existing \$1.75 billion allocation be withdrawn. In November of 2016, the old allocation was withdrawn and the new allocation was granted.

\$600 million in private activity bonds were subsequently issued for Phase 1 in December of 2017. These bonds help fund construction of new stations and track infrastructure. On December 5 of 2017, All Aboard Florida applied for an allocation of \$1.15 billion in private activity bond authority for Phase 2 of their project. This allocation was granted in December of 2017 and has an expiration date of May 31, 2018.

Thank you again for the opportunity to testify today regarding the Department's private activity bond allocation process to the All

Aboard Florida Brightline project, and I look forward to your questions.

[Prepared statement of Mr. Burthey follows:]

**STATEMENT OF
GROVER BURTNEY
DEPUTY ASSISTANT SECRETARY FOR POLICY
U.S. DEPARTMENT OF TRANSPORTATION
BEFORE THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON GOVERNMENT OPERATIONS
UNITED STATES HOUSE OF REPRESENTATIVES
HEARING ON
EXAMINING TAX-EXEMPT PRIVATE ACTIVITY BONDS
FOR
ALL ABOARD FLORIDA'S BRIGHTLINE PASSENGER RAIL SYSTEM
APRIL 19, 2018**

Chairman Meadows, Ranking Member Connolly, and members of the subcommittee, thank you for the opportunity to testify today.

My name is Grover Burtney, and I am a Deputy Assistant Secretary in the Office of the Under Secretary of Transportation for Policy at the United States Department of Transportation. In my role at the Department I oversee both the Office of Infrastructure Finance and Innovation and the Build America Bureau, the entities with historical and current responsibility managing the Private Activity Bond allocation process.

As you are aware, Private Activity Bonds (PAB) are a category of bonds issued by State or local governments to private investors. The interest on State or local bonds is normally not subject to federal taxation. But if State or local bonds are used to fund a private project, the interest is only tax-exempt if the bonds fit into one of several categories, including the category of "exempt facility bonds" at issue here.

Private Activity Bonds are a valuable tool in facilitating private investment in transportation infrastructure. Extending tax incentives to privately-financed projects or facilities that are similar to those enjoyed by publicly-financed projects or facilities helps to level the playing field and encourages increased private investment in transportation infrastructure.

Section 142 of Title 26 (the Internal Revenue Code) defines several different categories of “exempt facilities,” including multiple categories of transportation facilities, which may be financed using PABs. Many of these categories are subject to annual volume caps set by the statute and administered at the state level, while others are not limited in volume at all. Airports, docks and wharves, mass commuting facilities, and high-speed intercity rail facilities all fall into one of those categories with a volume cap. “Qualified Highway and Surface Freight Transfer Facilities,” a category established in 2005 by SAFETEA-LU, is unique in that it is subject to a nationwide volume cap of \$15 billion, which the Secretary of Transportation is directed to allocate in such a manner as the Secretary determines to be appropriate. From enactment until today, approximately \$8.25 billion of this volume cap has been issued, and an additional amount of approximately \$2.8 billion is currently allocated.

The statute authorizing this category (26 USC 142(m)) defines “Qualified Highway and Surface Freight Transfer Facility” to mean, among other things, “any surface transportation project which receives Federal assistance under Title 23, United States Code (as in effect on the date of enactment of this subsection).” The Department has consistently understood this language to mean any surface transportation project which receives assistance from Title 23—not highways alone—is eligible for PAB issuance.

All Aboard Florida (AAF) originally applied for an allocation of \$1.75 billion in Private Activity Bond Authority for both Phase 1 and Phase 2 of their project—later named “Brightline”—in August of 2014. Brightline Phase 1 is passenger rail service from Miami to West Palm Beach and Phase 2 would extend the service to Orlando International Airport. The application indicated that in the time since the planning process for the AAF project had begun, the Florida Department of Transportation has spent Title 23 funds improving railway-highway grade crossings along the project corridor. Based on these expenditures, the Department determined that the AAF project was a “surface transportation project which receives Federal assistance under title 23” and it therefore qualified for a PAB allocation under 26 USC 142(m)(1)(A). The Department issued an allocation letter in December of 2014. The Department acted subsequently to extend that allocation twice.

In September of 2016, AAF submitted a new application requesting a \$600 million allocation for Phase 1 of the Brightline project. It simultaneously requested that the existing \$1.75 billion allocation be withdrawn. In November of 2016, the old allocation was withdrawn and the new allocation was granted. \$600 million in private activity bonds were subsequently issued for Phase 1 on December 19 of 2017. These bonds have helped privately fund construction of new stations and track infrastructure from Miami to West Palm Beach that will provide a new passenger rail transportation alternative in South Florida.

On December 5 of 2017, AAF applied for an allocation of \$1.15 billion in PAB authority for Phase 2 of the project. This allocation was granted on December 20, 2017, and has an expiration date of May 31, 2018. Should AAF apply for extension of their allocation, the Department will review that request using established procedures.

Thank you again for the opportunity to testify today regarding the Department's Private Activity Bond Allocation to the All Aboard Florida's Brightline Project. I look forward to your questions.

Mr. CONNOLLY. Nineteen seconds, pretty good for government work, Mr. Burtney.

Mr. MEADOWS. Thank you for your testimony.

Is it Goddard, is that correct?

Mr. GODDARD. That's correct.

Mr. MEADOWS. I don't want to pronounce it wrong the whole time. So 5 minutes, Mr. Goddard. Thank you. You're recognized.

STATEMENT OF PATRICK GODDARD

Mr. GODDARD. Thank you, Chairman.

Chairman Meadows, Ranking Member Connolly, and members of the subcommittee, thank you for the invitation to participate in this hearing. My name is Patrick Goddard, and I'm the president and chief operating officer of Brightline.

As many of you know, Brightline has revived the legacy of Henry Flagler, who introduced passenger rail to Florida over 100 years ago. We launched our service in January between Fort Lauderdale and West Palm Beach, and Miami is set to begin operations in the coming weeks.

Early works to Orlando are also now underway, which will connect major economic engines for the third-largest State in our country. In doing so, we have created employment for over 10,000 people.

I'm excited to report that early ridership numbers are higher than anticipated and support for our current service and future expansion opportunities from consumers, elected officials, and the business community has been nothing short of overwhelming.

This model serves city pairs that are too short to fly and too long to drive. It's working, and it will work in other markets across the country.

There was never a more important time than now to build this system that will benefit all of Florida and its visitors. Today, 400 million trips are taken annually in this market relying on roads and airways that are among the most congested in the Nation. Driving speeds on the Interstate 95 highway in south Florida currently average 34 miles per hour with no capacity for improvement.

With 20 million residents and 116 million visitors, enhanced mobility between these markets is vital to meeting the growth trajectories in this region.

Brightline will eventually take up to 6 million trips off our highways, giving residents and tourists a safer, more reliable, and convenient means to travel around the State.

That said, I would like to address the topics that have been brought to bear today.

First of all, Brightline is a private company and is privately funded. Contrary to propaganda disseminated by some of our opponents, private activity bonds are not government funded and taxpayers are not at any risk whatsoever.

The Federal Government does not guarantee the bonds, subsidize the interest rate on the bonds, or assume any liability for the project's losses or cost overruns. Private investors assume 100 percent of the risk and local governments receive millions of dollars in new tax revenue.

In fact, it is estimated that Brightline will generate more than \$650 million in tax revenue to Federal, State, and local governments, and there will be \$6 billion in positive economic impact over 8 years.

In addition to the PABs, which are collateralized by our assets, we have invested over a billion dollars in equity, which is at risk, not an insignificant amount of our own money.

Despite this investment, at our own risk and for public benefit, might I add, we still face opposition from a minority of narrow-minded residents of two counties along our corridor who are willing to support passenger rail everywhere, it seems, except in their own backyard.

The fact is, I concur with Mr. Connolly, President Trump's infrastructure bill is what is actually on trial in this room and as long as we allow a small group of obstructionists to tie up courts and spend taxpayer dollars on frivolous lawsuits to stand in the way of necessary progress.

On safety. Safety has been Brightline's priority since the inception of this project back in 2012. APTA has published a recent study demonstrating that train travel is 90 percent safer than travel by car. With 700 deaths year-to-date on our State's roads, I would say that percentage is far higher in Florida.

Rail opponents to our north claim that recent incidents validate their claim that passenger rail is unsafe. But they choose to ignore the facts and the actual police reports surrounding these incidents, a common theme of bending information to suit their anti-progress narrative.

In every incident to date, all of the safety and warning systems worked exactly as intended. These were all examples of individuals circumventing the very equipment that was put in place to protect them.

It's impossible to have a conversation about rail safety without discussing opioids and mental health. Every person who has died on our railroad has either chosen to end their lives or been under the influence of drugs.

In every aspect of this project, Brightline has gone above and beyond what is required by regulators and what is expected of others in our industry.

Early ridership and guest feedback tell us we are bringing a much-needed solution to south Florida. Not only are people in the State excited about Brightline, but in January, your colleagues Bill Shuster and Peter DeFazio took part in our launch, tried our trains, and walked away overwhelmingly impressed.

I welcome you and all members of this subcommittee to join us in Florida and to see our impressive operation.

I thank you.

[Prepared statement of Mr. Goddard follows:]

Testimony of
Patrick Goddard
President and COO
All Aboard Florida – Operations, LLC
Before the
U.S. House Oversight and Government Reform Committee
Subcommittee on Government Operations
On
Examining Tax Exempt Private Activity Bonds
For All Aboard Florida's Brightline Passenger Rail System
Submitted by



161 NW 6th Street
Suite 900
Miami, FL 33136

April 19, 2018

Introduction

Chairman Meadows, Ranking Member Connolly and members of the subcommittee, thank you for the invitation to participate in this hearing. My name is Patrick Goddard, and I am the President and Chief Operating Officer of Brightline. I am pleased to share a private industry perspective on the opportunities to introduce intercity passenger rail as an important example of the kind of transportation solutions needed for cities across the country where increased mobility options are essential to support prosperity.

Background

Brightline, and its holding company All Aboard Florida, are wholly owned subsidiaries of Florida East Coast Industries, LLC (FECI) a transportation, infrastructure, and real-estate development company based at our signature MiamiCentral station in downtown Miami.

The All Aboard Florida project, now branded as Brightline, was established in 2012 to pursue passenger rail opportunities on a private, for-profit basis. FECI traces its roots to the late 1890's and the company founded by Henry Flagler who first introduced an integrated rail network into Florida. That railroad gave rise to the growth of most of what is now the country's third largest state. Originally the system was built as a railroad that carried passengers from points north to new development projects along the Florida coastline, and also carried the freight to support the needs of those people and of those building the communities emerging along the new infrastructure backbone. In the late 1960's the passenger service ceased operations, (as was commonplace with many US passenger rail routes) but the freight service continued to support the growth of the state. After some 120 years of continuous operations, the original railroad remains a profitable private enterprise.



A Vision for Passenger Rail in America

Leveraging the legacy of the original company and its historic assets which include a century of previous investment into railroad infrastructure, All Aboard Florida has invested \$2 billion of private capital over the last 5 years, invested entirely in the United States with all expenditures for our trains, track materials and labor in compliance with Buy America standards, toward a reintroduction of passenger rail service to major Florida cities. This express, intercity passenger train, operating under the brand name Brightline, is a newly created, consumer-oriented brand built to support an optimistic vision for what it means to travel by train in America. Brightline is being introduced in two phases, with phase one service operating between Miami, Fort Lauderdale and West Palm Beach and phase two service extending from West Palm Beach to Orlando, terminating at the Orlando International Airport. There are additional potential expansions, including Tampa and Jacksonville that are being studied. Phase one is currently running introductory service between West Palm Beach and Fort Lauderdale, with Miami service set to begin in the coming weeks. This initial phase is an all-important first step toward a vision to fully connect the Southeast and Central Florida markets - two driving forces of the overall economy of the third largest state in the country.

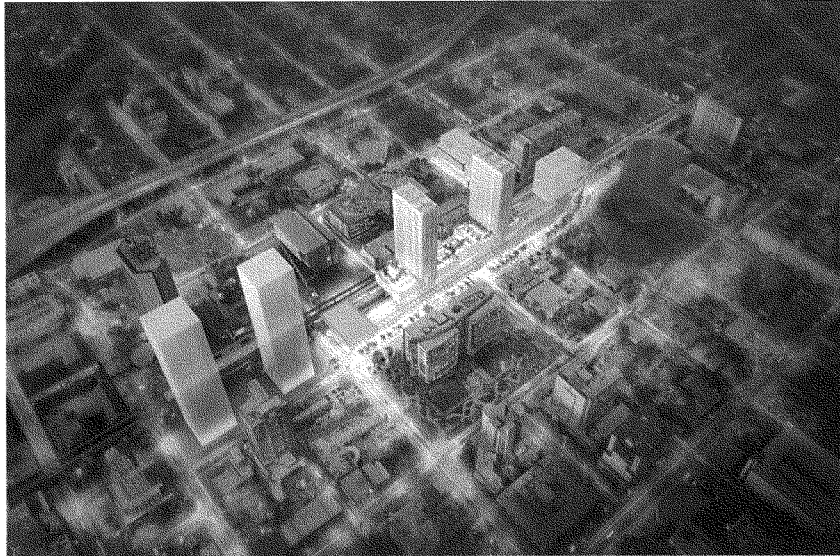
Today, 400 million trips are taken annually in this market, relying on roads and airways that are among the most congested in the nation. Driving speeds on the interstate 95 highway in south Florida currently average 34 miles per hour. With nearly half of the state's 20 million residents living in communities connected to the railroad corridor, and many of the more than 116 million visitors to Florida attracted by the complementary attributes of Central Florida attractions and South Florida's beaches and culture, enhanced mobility between these markets is vital to meeting the growth trajectories in this region.

These trips, which we see as "too long to drive and too short to fly" represent the opportunity for the next generation of American train service. Today's market sensibilities are vastly different than those of 1969 when intercity travel by train in Florida effectively stopped. The demand for alternatives to private cars on crowded roads has never been clearer. Demand driven by growth, dysfunction generated by congestion and the social priorities of a modern demography all support the future prospects for passenger rail as a key component of transportation networks.

Only six years since it was conceived, Brightline is now carrying customers in a fleet of state-of-the-art, fuel-efficient trains, to three new stations, across 70 miles of modernized railroad infrastructure that will incorporate the most advanced signaling and safety technology available, including Positive Train Control.



In addition to the new train operations, we have built new multi-modal transit hubs in the heart of the existing downtown cores of three of Florida's most important cities. With over 1.5 million square feet of mixed-used development in and around our stations, an important second component of the project will welcome new occupants concurrent with the Brightline trains. These new urban environments benefit from added transit activity and also contribute to the use, and therefore viability, of the new train system by increasing the density and proximity of many new customers.



MiamiCentral Station

A major component of Brightline's intermodal advantage is its direct connection to the adjacent MetroRail and MetroMover systems and the cross-utilization of commuter and intercity rail on our MiamiCentral station platforms. As a result of a successful collaboration between All Aboard Florida and the South Florida Regional Transportation Authority (SFRTA), regional commuters will soon be able to get to downtown Miami with a one-seat ride on the TriRail system, the first downtown connection for this public system since it began in 1985.

Brightline offers an efficient and sustainable transportation system that will connect communities, bringing a much needed and often overlooked component of successful urban redevelopment efforts. Particularly in Miami, our station and new corporate headquarters is located in a long-neglected and economically disadvantaged area known as Overtown. This once bustling African-American community was effectively marginalized when the new interstate system split Miami's downtown neighborhoods in the 1960's.

With our commitment to the Overtown community, which includes hiring preferences for local residents amounting to more than 24% minority participation in our workforce for the downtown Miami station, we are proving to be the catalyst that has already encouraged others to re-invest in this historic part of downtown and bridge a decades long divide in Miami's city center.

With the second phase of Brightline, the service will stretch north from West Palm Beach for 180 miles and ultimately connect into a new multi-modal station that is the center piece of the Orlando International Airport's terminal expansion. Orlando Airport's Intermodal Terminal Facility (ITF) is already completed and will ultimately host four train and transit operations, including an Automated People Mover, currently carrying passengers between terminals; Central Florida's commuter rail system known as SunRail; a future light rail system to Orlando's tourist district and convention center, and finally, All Aboard Florida's Brightline intercity passenger rail system.

It should be noted Orlando Airport planned their ITF in the 1990's and designed it to accommodate a future high speed or express intercity rail system long before All Aboard Florida's Brightline was conceived. With the eventual demise of previous attempts to launch a publically funded high speed intercity rail, All Aboard Florida approached the airport authority with a proposal to rent that portion of the terminal originally planned for intercity high speed rail. Utilizing this space under a fair market lease agreement, Brightline is currently a tenant in that facility, paying rent today for a system that will not begin operating for another two to three years. With this leg the connection to Central Florida will be accomplished; and as a result, the linking of a major international air gateway to an intercity passenger rail network will put this facility among a small group of American airports that have achieved this level of connectivity.

The further integration of the various other transportation systems that convene at the airport, in particular Central Florida's SunRail commuter system, will be facilitated with direct connections and immediate proximity.



**Turner
Kiewit**

Orlando International Airport
South Airport Intermodal Terminal Facility
01.16.18

aerial
Innovations

In fact, each of our station facilities have been planned and constructed to optimize connections and ease of cross-utilization between all existing and planned future transit systems.

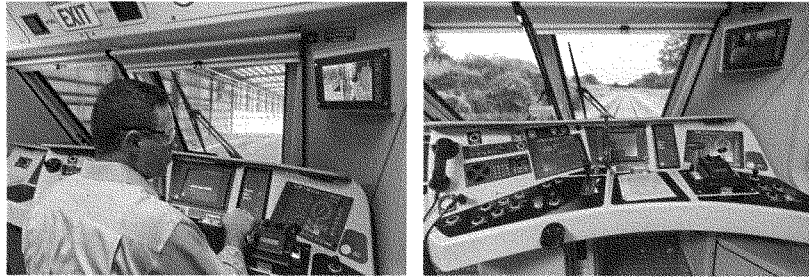


Job Creation

When completed, All Aboard Florida's investment in Brightline will exceed \$3.5 billion. In addition to creating up to 10,000 jobs during the design and construction phases of the rail system and thousands more associated with train operations and ancillary development, Brightline is an investment in STEM related education and employment opportunities. From our advanced technology train equipment with fuel efficient, environmentally friendly EPA Tier 4 compliant engines, to modern signaling and communications systems designed to enhance safety and produce a high quality customer experience, Brightline is making a commitment to a workforce training regime that includes skill-based apprenticeship education and diversity in hiring. Our minority workforce currently exceeds the minimum Florida Department of Transportation benchmark for public infrastructure projects.

We believe Brightline is a prototype of what a future private passenger rail workforce may look like. As a new company operating alongside an existing, long-established freight company we find that through relationships in the form of joint-use agreements and joint-ventures, such as with our dispatch and infrastructure maintenance operations, we can create a working partnership that includes union and non-union personnel working collaboratively.

Through equity in pay and benefits, such arrangements can contribute to healthy working conditions, healthy companies and safe joint operations.



Investment Thesis

Our business plan is quite simple. We believe that markets comprised of city pairs that are 250-350 miles apart present opportunities for trains to provide a more efficient, comfortable, and reliable alternative to cars and planes. The addition of integrated real-estate development aligns two economic engines that revitalizes the urban landscape and addresses a state goal to connect the major population centers by intercity rail.

The lack of analogous precedent for operating systems within the United States meant that lessons needed to be learned from a comprehensive study of the global markets where profitable rail services can be found. In addition to transportation analogs, we gleaned knowledge from the perspective drawn from other hospitality service offerings as a benchmark for a new transportation service. Combining these with best-practice observations from examples of Transit-Oriented Development (TOD), we developed a balanced approach to

breaking the inertia that has beset many initiatives similar to ours being considered elsewhere in America.

The advantages of a private-sector model, which exerts efficiency from all parts of a process and focuses on the time value of money as a central tenet of achieving profitability, is also a key aspect of the overall business thesis.

Opportunities for Government and Industry Cooperation

Our experiences have sharpened our perspective on several key factors where enhanced interaction between government and industry will contribute to more and faster results. The objective should be to encourage the billions of dollars of capital earmarked for infrastructure to be deployed against creating *new* systems that will generate growth, and contribute new capacity into our transportation infrastructure networks.

There is ample equity capital available in the current markets targeting the prospects for infrastructure and transportation as long-dated assets worthy of investment. The challenge is that the majority of this capital will move toward existing and established projects and therefore not generate incremental assistance to the core challenge of capacity.

We applaud the most recent efforts by Congress to address the most critical areas that will help pioneering efforts such as ours; streamlining of complicated regulatory processes, and enhancements to the debt markets that must accompany equity investments to produce new projects.

Our own experiences with expanding our business into its second phase, which represents an incremental investment of more than \$2 billion, clearly demonstrate these points.

Financial incentives also factor heavily in these decisions. As the demand for services such as Brightline continue to emerge, the opportunity to attract private capital to support this new infrastructure can be catalyzed through efficient utilization of already existing programs such as Tax-Exempt Bonds, and the RRIF program.

Tax-exempt Private Activity Bonds (PABs) have long been an effective method of attracting private financing of projects that provide public benefits. Brightline's eligibility for PABs fall under a provision of the 2005 transportation legislation known as SAFETEA-LU, which

amended the Internal Revenue Code to add highway and surface freight transfer facilities (expressly defined as "any" surface transportation project which receives Federal assistance under title 23, United States Code) to the types of privately developed and operated projects for which private activity bonds (PABs) may be issued. This change allows private activity on these types of projects, while maintaining the tax-exempt status of the bonds.

Contrary to the claims of Brightline opponents, taxpayer's are not at risk by the use of Private Activity Bonds. The Federal government does not guarantee the bonds, subsidize the interest rate on the bonds, or assume any liability for the project. They do not impact the credit, borrowing or debt load capacity of the state, counties or municipalities.

Private investors assume 100% of the risk and, while the investor receives a tax-credit, federal, state, and local governments receive millions of dollars in new tax revenue which result from the investment.

In Florida, it is estimated that Brightline will generate more than \$650 million dollars in tax revenue to federal, state and local governments and \$6 billion in positive economic impact over eight years.¹

As our project demonstrates, Brightline will continue to serve as an engine for growth and prosperity for Florida cities and local governments for years to come.

It should be noted that in the United States there are only two privately led efforts to construct and operate intercity passenger rail, Florida's Brightline, and another in Texas. There are many other city-pairs across America with distances considered "too long to drive too short to fly" that can successfully and sustainably operate a passenger rail system without public subsidies.

The old mantra that no passenger rail service can make money is simply not true. If improving our nation's infrastructure is truly a bi-partisan goal, as is often stated in Washington, then this is the kind of incentive that all should agree is most impactful on our economy and least impactful on taxpayers. Project such as this will jump start our national effort to repair our crumbling infrastructure and modernize our existing transportation systems, create jobs and generate new tax revenues.

¹ Washington Economics Group, May 2014

Safety

This committee has also indicated its interest in our safety plan in the operation of this groundbreaking and transformative project. Let me be clear, in the design and operation of this passenger railroad safety has always been our foremost goal.

In phase two of this project, our existing railroad crossings will be significantly upgraded with additional safety components and traffic warning systems under the strict supervision of the Federal Railroad Administration (FRA) and Florida Department of Transportation (FDOT). Conducted by a team of engineers from FRA, FDOT, AAF, and each county and city public works department, every highway-railroad crossing between Miami and Cocoa was subject to on-site inspection and evaluation to determine the scope of improvements necessary for the operation of higher speed passenger rail.

In the course of this evaluation, the FRA determined that they would require AAF to upgrade crossings to meet national "Sealed Corridor" standards. The Florida DOT Secretary reiterated this same requirement in a 2014 response to an inquiry from the Treasure Coast Regional Planning Council stating "We will require AAF to comply with the Federal Railroad Administration's guidelines for crossing safety as specified for higher speed passenger rail services."²

We have met those requirements, which have been confirmed by the FRA in separate correspondence, stating that AAF's "plans comply with the grade crossing mitigation requirements in FRA's Final Environmental Impact Statement (FEIS)."³ And in a follow up: "Let this email response serve as an official confirmation that the proposed set of grade crossing design plans (herein, "alternative design") as identified below still complies with the "Sealed Corridor" concept as outlined in FRA's Highway-Rail Grade Guidelines for High Speed Rail, conforms with the requirements of the ON-SITE FIELD ENGINEERING REPORTS, and meets the intent as specified in FRA's FEIS document dated August 2015."⁴

² June 4, 2014 letter from FDOT Secretary to the Treasure Coast Regional Planning Council

³ May 3, 2016 letter from Patrick Warren, Deputy Assoc. Administrator for Safety Compliance, FRA

⁴ August 24, 2016 email from Frank Frey, Acting Staff Director, Signal and Train Control Division, FRA

The efficiencies and safety benefits of major rail infrastructure and grade crossing upgrades of the level Brightline is installing is plainly illustrated in a 2015 safety study commissioned by Indian River County, one of those counties opposing this railroad. The report concluded that they "can find no decrease in Grade Crossing Safety with the advent of AAF. To IRC's benefit, the additional capacity improvements, other additional infrastructure, safety improvements, upgraded crossing warning devices (regulated by Federal Railroad Administration (FRA), implementing suggestions for quiet zones, fencing, pavement markings, a public awareness campaign and a finding of no additional closure time with the additional trains, draws a conclusion that there is no adverse Safety impact to IRC from AAF. If the proposed upgrades actually occur, they will improve and update the safety factors that exist today."

It should be noted that Indian River County, not satisfied with their consultant's conclusion, did not make public the report until questioned by the local newspaper.

A major component of our commitment to safety was the restoration of the previously removed second track that will allow for joint freight and passenger use. The FEC Railway has always been considered the gold standard for safety and the early adoption of new technologies, such as the addition of Automatic Train Control (ATC) in the 1980's. ATC is a forerunner to PTC, which is currently being installed and will be operational by the end of 2018 in phase one. PTC will be fully installed in phase two by the time it begins service in 2021.

We are one of the first railroads that will utilize a new technology, Vehicle Presence Detection (VPD), a warning system that will automatically open an exit gate for a vehicle stopped on the track while simultaneously warning an approaching train.

In South Florida where Brightline began limited service in January, rail opponents to our north have highlighted recent fatalities as a reason to stop expansion to its waiting station in Orlando. One Member of Congress even demanded we shut down altogether.

Let's look at facts. Not a single incident on our railroad has been due to a failure of safety systems associated with this rail service. Those who have been injured or tragically died have either ignored warning signals by crawling under a gate, going around a gate to beat the train, or have entered the corridor for purpose of suicide.

In fact, two people have committed suicide on our tracks since last year, with a third suspected but unconfirmed suicide. Suicide by rail is a major problem that should be addressed in another forum in the context of mental health issues and opioid abuse.

Two other deaths have been the result of people willfully disobeying traffic warning signals, which is the same as running a red light and carries the same penalty under Florida law. Toxicology reports have confirmed each individual has been impaired by drugs or alcohol.

Let me put this in context with some other statistics. In South Florida we have a nearby commuter rail (TriRail) that has been operating for about 30 years. In 2017 they recorded 17 fatalities.ⁱ

Central Florida's SunRail commuter rail has recorded nine fatalities in 2017, three of them ruled suicide.

Florida is ranked number two in the nation in pedestrian deaths on highways with 652 deaths in 2016 and 303 in the first half of 2017.ⁱⁱ

Within Brightline's phase two operating corridor of the Treasure Coast counties, represented in part by the Member who requested this hearing, there were 655 pedestrian accidents resulting in 36 deaths in 2017.ⁱⁱⁱ

Railroads are among the safest forms of transportation. Less than 3% of all transportation fatalities are by train according to the National Safety Council statistics.

However, be assured, Brightline is not content with simply accepting injuries and deaths when people trespass on active railroads or ignore warning signals. The key to safety is Education, Engineering & Enforcement. With these words as our guidepost, we have taken extraordinary extra steps to educate the public about safe behavior around railroads and to explore additional ways to reduce incidents.

Since Brightline began service in January of this year, we have added a number of initiatives to our ongoing safety campaign:

- We have placed 20 Variable Message Signs (VMS) at major crossings with warning messages about new train activity

- Working with Operation Lifesaver, we have trained 40 Brightline Teammates as authorized Operation Lifesaver Volunteers
- We have broadcast over 1000 public service announcements on TV and Radio in English, Spanish and Creole
- Brightline Teammates have been deployed at major highway – railroad crossings to meet with pedestrians, hand out flyers in nearby businesses, and engage and educate our South Florida communities about the importance of staying safe around active railroad tracks
- Brightline Safety and Security personnel have hosted more than a dozen First Responder training sessions
- More than 92,000 fliers with safety information have been distributed to families with school-age children. School children are given pledge cards where they pledge to never walk or bike along tracks, cross tracks when a train is moving and to “b safe” near railroads
- 500 bus drivers have received training about train activity and safe driving near tracks.
- Brightline has employed off-duty police at key crossings to step up enforcement of trespassing laws
- Working with local cities, Brightline is installing additional safety features where feasible.

Brightline is operating on a rail corridor that has been in continuous use since 1895, private property on which AAF/Brightline and Florida East Coast Railway share ownership. Having spent more than \$1.5 billion dollars to date, none of which are taxpayer funds, we are committed to completing this rail system to Orlando, making real a long-sought Florida dream to give our 20 million residents and 115 million visitors an alternative to the highway.

Strong statewide support of Brightline notwithstanding, the two counties opposing this passenger rail have made it clear their goal is to stop this private company from completing the system, thus preventing Brightline from using its private property to restore passenger rail to the corridor and provide this much needed public service to a growing state.

To accomplish their goal, they have gone to great lengths to create fear among the general populace, conjuring up scenarios that defy logic and which have not been demonstrated to have occurred in other rail corridors around the nation.

To date, the two counties currently fighting Brightline have spent more than \$7 million in tax dollars to fight this rail project. In January of this year, they filed their 9th legal action against this project. They have been unsuccessful in their eight previous actions.

It is unfortunate that a Committee of the United States Congress is now being used, while we are in litigation again, by a small group of rail opponents to referee a local dispute they have not won in court.

We believe it would be more productive for them to sit down with us and engage in reasonable dialogue that can result in reasonable yet tangible benefits, a dialogue in which Brightline is more than willing to participate.

As we approach our Miami service launch date, and continue work on the expansion of our system to Orlando, I welcome the opportunity to have any member of this committee visit our amazing stations in South Florida and enjoy a train travel experience that has already become the new benchmark for intercity passenger rail in America.

Thank you for the opportunity to share these thoughts with you today. I am happy to answer any questions or comments you may have.

ⁱ TriRail does not differentiate suicide from other categories

ⁱⁱ Spotlight on Highway Safety, Governors Highway Safety Association

ⁱⁱⁱ Florida Department of Highway Safety and Motor Vehicles

Mr. MEADOWS. Mr. Crandall, I'm going to recognize you, and I'll give perhaps one just caveat based on Mr. Goddard's opening remarks.

Try to keep personalities out of it. And, Mr. Goddard, I don't think it serves your case well when you call some of Mr. Posey and Mr. Mast's constituents narrow-minded and obstructionists. But that's mine.

The rest of the panel, I would just encourage you to try to keep personalities out of it.

Mr. Crandall, you are recognized for 5 minutes.

STATEMENT OF ROBERT CRANDALL

Mr. CRANDALL. Thank you, Mr. Chairman, Ranking Member Connolly, members of the subcommittee. Thank you for inviting me. My name is Robert Crandall. I live in the Treasure Coast region, and at one time I was chairman of American Airlines.

CARE Florida, where I have served on the steering committee since 2014, is a coalition of Treasure Coast citizens and organizations trying to preserve the character of the several communities through which All Aboard Florida proposes to run 32 daily passenger trains at 110 miles per hour.

I'm here to answer a straightforward question. Should this project be subsidized by Federal taxpayers? CARE Florida believes the answer to that question as no, for three reasons.

First, the DOT's allocation of \$1.15 billion in private activity bonds, or PABS, to All Aboard Florida is improper, unlawful and in direct contravention of congressional intent. Second, because All Aboard Florida is unsafe as designed. And finally, because in CARE Florida's judgment and mine, the project cannot be financially successful.

I would like to spend the next couple of minutes addressing the PABs and then add a word on financial viability.

All Aboard Florida portrays itself as a private enterprise, but it has demonstrated an insatiable desire for taxpayer-subsidized financing and is unlikely to be able to finance its project without it.

In August of 2016, a U.S. District Court ruling on a DOT allocation of \$1.75 billion, the original allocation, cited legitimate questions about All Aboard Florida's commitment to completing the project without PABs.

First of all, and I quote the Court, "PAB-based financing is not just the current financing plan, it appears to be the only financing plan." And I ask that that ruling be made a part of this hearing record.

Mr. MEADOWS. Without objection, so moved.

Mr. CRANDALL. Unhappily, the U.S. DOT, in our judgment, does not have the statutory authority to allocate PABs for this type of passenger rail project. The Internal Revenue Code allows the issuance of tax-exempt PABs only if the project to be financed falls into 1 of the 15 specified categories on the chart.

A high-speed intercity rail facility would qualify, but no one, not AAF and not DOT, disputes the fact that AAF is not high speed and does not qualify.

DOT has chosen, therefore, to approve PAB allocations based on the theory that it is a qualified highway or surface freight transfer

facility. But AAF is a passenger railroad. It is not a highway. It is not a freight transfer facility.

Nonetheless, DOT has allocated \$1.15 billion, the largest PAB allocation to date, claiming that AAF can be considered a highway because once, years ago, the Florida Department of Transportation spent \$9 million in Title 23 highway funds to improve highway rail crossings in the separately owned Florida East Coast Railway corridor in which AAF will run.

In recent years, there have been several attempts, occasions, on which the Obama administration or individual Members of Congress have proposed to amend the statute to include passenger rail projects that do not meet the current high-speed definition. None of those proposals were ever enacted, but the fact that they were proposed is a clear admission that the authority does not exist.

In closing, I would like to comment briefly on AAF's projected financing. In order to succeed, they must obviously raise enough revenue to cover their costs.

Twice, in 2013 and in 2017, they have commissioned revenue studies. In 2017, they proposed a study which increased the 2013 assumptions by doubling fares and thereby increasing, according to this study, passengers by 52 percent and tripling revenue.

Now, if anybody when I was running American Airlines had told me that we could change a route from a loss to a success by doubling our fares and would thereby triple our revenues, I would have paid little attention.

We are glad this hearing is taking place. We are glad you are watching. We hope you will decide to end this debacle.

Thank you very much.

[Prepared statement of Mr. Crandall follows:]

**Statement of
Robert L. Crandall, on Behalf of
Citizens Against Rail Expansion in Florida (CARE FL)
Before the
House Committee on Oversight and Government Reform
Subcommittee on Government Operations
Hearing on
All Aboard Florida/Brightline
Thursday, April 19, 2018**

Chairman Meadows, Ranking Member Connolly and Members of the Subcommittee, thank you for inviting me to testify today on the All Aboard Florida passenger rail project. My name is Robert Crandall. I am the former Chairman of American Airlines and now live in the Treasure Coast region of Florida. I have served on the Steering Committee of Citizens Against Rail Expansion in Florida (CARE FL) since 2014.

CARE FL is a coalition of Treasure Coast community leaders, organizations, and residents devoted to protecting the safety, welfare and way of life of the more than 10 million people living in and around the areas that will be impacted by Phase II of the AAF project. All Aboard Florida proposes to run 32 new passenger train crossings per day up Florida's highly populated east coast at speeds of up to 110 mph. CARE FL opposes Phase II of the AAF project, which would run from West Palm Beach to Orlando—directly through the communities CARE FL represents.

Today, I am here to answer a straightforward question: Should this project be subsidized by federal taxpayers? CARE FL believes the answer to this question is “NO”—for three reasons. First, the U.S. DOT's allocation of \$1.15 billion in private activity bonds (PABs) to All Aboard Florida is improper, unlawful, and in direct contravention of congressional intent. Second, because All Aboard Florida is inherently unsafe if operated at

the intended speed and finally, because in CARE FL's judgment, the project cannot be financially successful and could become a continuing taxpayer burden.

I will leave the discussion of the project's serious safety concerns to my fellow panelist, Chief Dan Wouters from Martin County. Dylan Reingold of Indian River County will address the issue of safety costs being foisted on the local communities. I'd like to spend the next few minutes addressing the PABs and add a final word on financial viability.

All Aboard Florida portrays itself as a private enterprise, but in reality, **AAF has an insatiable desire for taxpayer subsidized financing and is unlikely to be able to finance its project without it.** In August 2016, a U.S. District Court ruling on a prior DOT allocation of \$1.75 billion in PABs to All Aboard Florida cited "legitimate questions" about All Aboard Florida's commitment to completing the project without PABs. The court stated: "First of all, PAB-based financing is not just the 'current financing plan' for the project—it appears to be the *only* financing plan."¹ I ask that this ruling be made a part of this hearing record, as read.

As a result of litigation brought by Martin County, Indian River County, and CARE FL members, DOT withdrew the \$1.75 billion PAB allocation to AAF in November 2016. Immediately thereafter, DOT approved a \$600 million PAB allocation for use only on AAF Phase I (to replace very expensive debt issued earlier by AAF). Subsequently, on December 20, 2017 All Aboard Florida sought an additional PAB allocation of \$1.15 billion for use on Phase II. Not coincidentally, those two PAB allocations—\$600 million for Phase I and \$1.15 billion for Phase II—equal the same amount as the \$1.75 billion PAB allocation that AAF sought in 2014, and that was later withdrawn in 2016.

¹ See page 9 of August 16, 2016 Memorandum Opinion from U.S. District Judge Christopher R. Cooper

PABs are not cost-free to the U.S. government. U.S. taxpayers foot the bill when the U.S. government treats PABs as tax-exempt. As the U.S. District Court highlighted in its August 2016 opinion, an economist found that the cost to taxpayers of the originally sought \$1.75 billion PAB allocation would be up to \$600 million over the first 10 years.²

More importantly, the U.S. DOT does not have the statutory authority to allocate PABs for this type of passenger rail project. This is evidenced by a straightforward reading of the Internal Revenue Code provision governing PABs and its legislative history.

The Internal Revenue Code allows the issuance of tax-exempt PABs to finance a project only if it falls into one of 15 specified categories.³ A “high-speed intercity rail facility” would qualify if its trains are capable of traveling at speeds of more than 150 miles per hour, but AAF clearly does not qualify as “high speed” because its maximum speed is expected to be no greater than 125 miles per hour. No one—not even AAF or DOT—disputes the fact that an AAF train cannot achieve 150 miles per hour and therefore is not considered “high speed” under the statute. That should have been the end of the story.

Unhappily, DOT has chosen to approve PAB allocations for the AAF project based on the theory that it is a “qualified highway or surface freight transfer facility.”⁴ But AAF is a passenger railroad. It is neither a highway nor a freight transfer facility.

² See page 26 of August 16, 2016 Memorandum Opinion from U.S. District Judge Christopher R. Cooper

³ The 15 categories are: “(1) airports, (2) docks and wharves, (3) mass commuting facilities, (4) facilities for the furnishing of water, (5) sewage facilities, (6) solid waste disposal facilities, (7) qualified residential rental projects, (8) facilities for the local furnishing of electric energy or gas, (9) local district heating or cooling facilities, (10) qualified hazardous waste facilities, (11) *high-speed intercity rail facilities*, (12) environmental enhancements of hydroelectric generating facilities, (13) qualified public educational facilities, (14) qualified green building and sustainable design projects, or (15) *qualified highway or surface freight transfer facilities*.” 26 U.S.C. § 142(a) (emphasis added).

⁴ 26 U.S.C. § 142(a)(15) and (m) defines “qualified highway or surface freight transfer facilities” as follows: “(A) any surface transportation project which receives Federal assistance under title 23, United States Code (as in effect on the date of the enactment of this subsection), (B) any project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible and which receives Federal assistance under title 23, United States Code (as so in effect), or (C) any facility for the transfer of freight from truck to rail or rail to

Nonetheless, DOT has allocated \$1.15 billion—the largest PAB allocation to date—to the AAF project, claiming that AAF can be considered a “highway” under the statute because, years ago, the Florida Department of Transportation spent \$9 million in Title 23 highway funds to improve highway-rail crossings on the separately owned Florida East Coast Railway (FECR) corridor in which AAF will run. DOT has bonded out an entire passenger rail project based on the fact that a few Title 23 highway dollars were used in years past to improve highway-rail intersections.

This interpretation is clearly at odds with what Congress intended. In 2005, when considering the SAFETEA-LU transportation bill, Congress enacted Section 142(m) to add new types of projects to the then existing list of categories eligible for tax exempt PAB allocations. When doing so, Congress **intentionally omitted** lower speed passenger rail projects from the list of eligible projects, presumably due to fiscal concerns. Congress never intended to hand the Executive Branch a blank check for non-qualified projects, and DOT’s actions are a blatant and contemptuous attempt to circumvent the statute.

In the years that followed the enactment of SAFETEA-LU, there were several occasions on which the Obama Administration or individual Members of Congress proposed to amend the statute to include passenger rail projects that do not meet the current “high speed” definition of 150 mph. None of these proposals were ever enacted, but the fact that they were proposed is a clear admission that the authority was not granted under SAFETEA-LU. Your former colleague, West Virginia Congressman Nick Rahall (D-WV)—the longest serving Member of the Transportation and Infrastructure Committee in

truck (including any temporary storage facilities directly related to such transfers) which receives Federal assistance under either title 23 or title 49, United States Code (as so in effect).”

the history of the committee—set forth these facts in a 2015 declaration, detailing how it was not Congress’ intent to do so. I ask that his declaration also be made a part of this hearing record as read.

Further, on February 12, 2018, the Trump Administration released its Infrastructure Plan, which contradicts DOT’s theory that passenger railroads are highways. The Plan proposes a “modified description” of 142(m) to include passenger railroads.⁵ Again, this appears to be an admission that the current Administration knows it does not have the authority under current law to bond out a passenger rail project as a highway. DOT is deliberately subverting the rule of law by doing so.

In closing, I’d also like to comment on AAF’s projected finances. The project’s financial success is dependent on selling enough tickets at an appropriate price to generate enough revenue to cover its costs. In 2013, a ridership and revenue study prepared by the Louis Berger Group—a firm that, incidentally, has been debarred by the World Bank and has pled guilty to conspiring to defraud the U.S. AID – prepared ridership and revenue predictions for AAF. In 2017 the same firm prepared an updated study in support of AAF’s most recent PAB application.

The new study is wildly more optimistic than the 2013 version. The 2013 expected average fare of \$15.71 has more than doubled to \$32.70 while the number of passengers has increased from 1.94 million to 2.94 million. Using these assumption, the 2017 study projects 2020 revenue of \$96 million, 3 times the amount projected in 2013. In my former life, as Chairman of American Airlines, I would have paid slight attention to anyone who

⁵ “qualified surface transportation facilities, including roads, bridges, tunnels, passenger railroads, surface freight transfer facilities, and other facilities that are eligible for Federal credit assistance under title 23 or 49 (i.e., qualified projects under TIFIA) (existing category with modified description).” (emphasis added)

brought me numbers suggesting that doubling our fares would drive a 52% increase in passengers and a tripling of revenue. Despite their implausibility, these projections are the basis for the marketing of the PABs and the success of All Aboard Florida's passenger trains. In November 2017, Indian River County, Martin County and CARE FL submitted a detailed letter addressing these concerns to Florida's Joint Legislative Auditing Committee (JLAC). I would like to submit that letter for the record, as read.

Mr. Chairman, I know that fiscal responsibility is important to you and the other Members of this Committee on both sides of the aisle. The Subcommittee's role is to oversee the operations of the federal government. In this instance, I think the government is authorizing improper financing and thus misusing taxpayer dollars on behalf of an inherently unsafe and likely unsuccessful venture. I am glad you are watching and hope you will decide to end this debacle.

Mr. MEADOWS. Thank you, Mr. Crandall.
Chief, you're now recognized for 5 minutes.

STATEMENT OF DAN WOUTERS

Chief WOUTERS. Thank you very much.

Chairman Meadows, Ranking Member Connolly, and members of the subcommittee, thank you very much for inviting me to testify here today on the All Aboard Florida passenger rail project.

My name is Daniel Wouters. I'm a division chief for the Fire Rescue Department in Martin County, Florida.

Martin County is located in the Treasure Coast region and has 151,000 residents and 538 square miles. As the division chief, I'm responsible for emergency preparedness, response, and field operations in the county.

Within the Florida East Coast Railway in which the All Aboard Florida high-speed passenger train project is proposed, Martin County has 27 at-grade crossings. Currently, 10 to 14 freight trains pass through our region at speeds typically between 30 to 40 miles per hour.

On the upgraded rails, All Aboard Florida and FECR plan to run 32 high-speed passenger trains up to 110 miles per hour and freight trains up to 70 miles per hour through our community. The significant increase in the numbers and speeds of those trains passing through our traffic-congested at-grade crossings will negatively impact public safety.

The project will quadruple our railroad crossing closures, resulting in additional delays for fire rescue. The survivability of patients decrease each minute these services are delayed. The potential for injuries and fatalities is real, not hypothetical.

According to the FRA accident/incident overview from 2011 through 2017 in the FECR corridor, 107 fatalities and 191 injuries occurred, with 16 fatalities and 33 injuries in 2017 alone. If 32 high-speed passenger trains as well as additional faster freight trains are added, statistically these fatalities and injuries will increase based on the current trends.

In fact, this is already occurring. Since the start of the AAF trial runs between West Palm Beach and Fort Lauderdale, the All Aboard Florida trains have struck and killed five people and injuring others in separate incidents, involving pedestrians, bicyclists, and motorists.

When busy traffic occurs on roadways, motorists can inadvertently get caught at traffic signals, resulting in them stopping on the rails.

Two such incidents occurred on February 14 and March 10 of 2018. In one incident, a vehicle followed another onto the tracks, which had inadvertently stopped, leaving it stranded. In the second case, an elderly driver stopped for a red light when the crossing guards came down. The two incidents I referenced occurred in the span of less than a month on just a 46-mile short span.

In 2017, our response vehicles crossed the railroad tracks approximately 17,000 times responding to incidents as well as transporting patients to area hospitals. Based on the estimated increase in the rail traffic, there will be substantially more delays if the All

Aboard Florida project proceeds as planned due to a lack of grade separation through our community.

In our downtown area, a nearly 100-year old single-track bridge still exists. A parked freight train waiting to pass another train could substantially cause delays to our downtown community and impact public safety and response to hospitals.

Within the increased potential of collisions comes the potential for devastating chemical releases. To make this point, I would like to refer to a chart I have on the easel.

In 2015, Martin County conducted a vulnerability analysis to examine the potential for an impact of a single rail car crash resulting in a chemical release. This slide shows the potential for catastrophe based on the rail corridor proximity to the community.

If you'll notice in the shaded areas, the red areas are where patients would have life-threatening injuries, in the orange areas, serious, irreversible conditions, and the yellow area where they would have effects as well.

I summarize by simply stating that this shows a potential for significant harm to occur due to the track's proximity to that of Martin County.

There are additional harmful impacts such as no pedestrian crossings at 10 of the 27 at-grade crossings in Martin County. All Aboard Florida has told the county that local taxpayers will be responsible for 100 percent of those costs to add those safety features.

As well, with the increase in the additional track, there will be insufficient spacing at some locations for buses to stop between the traffic light and the rail. Because of this, it's essential that the installation of vehicle presence detection as well as dynamic exit gates are installed at all of the crossings.

Martin County is gravely concerned about the public safety risks and the increase in the proposed All Aboard Florida project.

Mr. Chairman, the FRA approved a \$1.15 billion bond allocation for this project based on a FEIS and the ROD that contained critically deficient safety analysis and recommendations. Given the track record for injuries and fatalities within the rail corridor, the FRA's decision to approve the project without the safety measures we have sought is both startling and dangerous.

Thank you very much.

[Prepared statement of Chief Wouters follows:]

**STATEMENT OF
DANIEL J. WOUTERS, FIRE RESCUE DEPARTMENT DIVISION CHIEF
MARTIN COUNTY, FLORIDA
BEFORE THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON GOVERNMENT OPERATIONS
HEARING ON
ALL ABOARD FLORIDA/BRIGHTLINE
THURSDAY, APRIL 19, 2018**

Chairman Meadows, Ranking Member Connolly and Members of the Subcommittee, thank you for inviting me to testify today on the All Aboard Florida (AAF) passenger rail project. My name is Daniel Wouters, and I am a Division Chief of Martin County's Fire Rescue Department, responsible for emergency preparedness, response and field operations. Martin County is located on the east coast of Florida and is the next county north of Palm Beach County. Martin County's population is about 151,000, a majority of whom live near the Florida East Coast Railway corridor (FECR).

AAF is proposing to add 32 high speed passenger train crossings per day within the FECR corridor. Martin County has 27 street level or "at-grade" road crossings and Indian River County has 31 at-grade crossings within the corridor. The significant increase in the number of trains passing through these traffic congested at-grade road crossings will impact public safety because it will increase delays for fire rescue calls due to the increase in train crossings. Road closures will quadruple, blocking fire rescue units from crossing to rescue a person in need of emergency services or transport. Survivability of patients decreases with each minute the services are delayed.

Presently there are about 10 to 14 freight trains travelling in the corridor each day. In 2013 and 2014, we experienced about 238 railroad crossing delays. These delays are small considering last year our rescue vehicles cross the railroad tracks approximately 11,500 times

while responding to incidents and more than 5,600 times when transporting patients to area hospitals.

There will be substantially more delays if AAF proceeds as planned through Martin County. If AAF proceeds, the U.S. DOT estimates there will be about 52 train crossings per day, both passenger and freight. Half of our emergency response zones for each fire rescue station will be negatively impacted in transporting the critically ill or injured to hospitals, which will take much more time. These are health emergencies in which literally every second counts.

In addition to the effects of increased road closures in the normal course of train travel, the County's Fire Rescue operations will also experience potentially deadly delays when trains are staged on the tracks waiting for other trains to pass, creating even more delays. A parked freight train can be a mile long or more and could block 10 consecutive at-grade intersections near our main and most important hospital.

Why would such a train be parked? Because a nearly 100-year-old single-track-drawbridge that currently takes 20 minutes to close and reopen will be required to be "down" for each of the 32 passenger trains and 14 to 20 freight trains each day. If the bridge is not yet down, trains have to idle and stop, creating a bottle neck for trains on each side of the old bridge. The bottleneck will cause blocking at the at-grade road crossings, delaying public safety responders. I cannot overstate my concern that these delays could significantly impact the level of service adopted by Martin County to respond to emergencies.

By contrast, Palm Beach County immediately south of Martin County has about 10 times as many people and thus has more fire stations on both sides of the rail corridor to serve its much greater population, so the impact there on rescue services will be less.

Another impact to public safety results from the increased likelihood of collisions because the high speed passenger trains will be sharing the corridor with freight trains. Currently, freight trains typically travel in Martin County at speeds ranging from 30-40 mph. On the upgraded rails, AAF and FECR plan to run freight trains up to 70 mph, as long as 2 miles in length, in the same corridor as passenger trains up to the 110 mph. This increase in both the number and speed of the trains—with both the high speed passenger trains and slower, longer freight trains sharing the tracks—significantly increases the probability of trains colliding with pedestrians, bicyclists, citizens in cars, children in school buses, as well as the possibility of these passenger and freight trains colliding with each other as they travel in the same corridor.

This potential for injuries and fatalities is real, not hypothetical. According to an FRA Accident/Incident Overview on the FECR from 2011 through 2017, numerous fatalities and injuries occurred along the existing FECR corridor from slow-moving freight trains. FRA data lists a total of 107 fatalities and 191 injuries from 2011 through 2017, with 16 fatalities and 33 injuries occurring in 2017 alone. If 32 high-speed passenger trains and 20 faster freight trains are added to these tracks, statistically these fatality and injury figures will increase.

In fact, this is already occurring. During *trial runs* for Phase I, AAF passenger trains killed two pedestrians in separate incidents—in July 2017 and November 2017. Further, since beginning limited Phase I service between West Palm Beach and Ft. Lauderdale—a 46-mile route—in January 2018, AAF trains have struck and killed three additional people and injured others in separate incidents involving pedestrians, bicyclists and motorists.

When traffic builds on busy roadways, including at intersections near the at-grade rail crossings, motorists can inadvertently get caught on the tracks due to the changing of a traffic

signal when the traffic suddenly stops, leaving a car on the tracks between the signaling devices. Two recent incidents of this type along Phase I evidence this type of scenario.

On March 10, 2018 in the short operating segment of Phase I, an All Aboard Florida train hit a car that was stopped on the tracks. The car followed the vehicle in front of it onto the tracks. It then was stranded. Fortunately, the driver was able to exit the vehicle and survived, but had she not gotten out of the car, it could have been a very different outcome. A similar incident occurred on February 14, in which another car was hit by a train. However, in that instance, the elderly driver—who was in his vehicle stopped for a red light when the crossing gates went down—was injured, as he was unable to exit his vehicle before it was struck. The two incidents I just referenced occurred in the span of less than a month on a short 46-mile route.

Similar incidents could occur in Martin County. For example, a student drop off area for a local elementary school is located in close proximity to an at-grade rail crossing. On a daily basis, parents line up in their vehicles to drop off or pick up their kids, resulting in vehicles idling in lines that usually span the crossing of the railroad. We all know the cars are not allowed to idle on the railroad tracks. However, we also know that it only takes one inadvertent error or a car in front of another unexpectedly stopping that could result in a tragic accident.

Martin County is also deeply concerned with the fact that there are currently no pedestrian crossing facilities at 10 of the 27 at-grade crossings in Martin County, meaning that pedestrians and bicyclists can only cross the rail tracks in the roadway. AAF has told the County if the County wants pedestrian crossings, the County will have to pay for them in full.

We are also concerned for our school buses. In our community, approximately 190 school buses travel over the FECR at-grade crossings each day, with each bus being 40 feet long. After the addition of a second rail, many crossings in Martin County will have no more than 23-

30 feet of storage space between the rail and parallel roadway. We are concerned school buses could get unintentionally stuck on the tracks, just like the two cars I mentioned earlier, because of the insufficient storage space. Installation of Vehicle Presence Detection and Dynamic Exit Gates is essential.

Beyond these numerous concerns caused by the at-grade crossings, the County also is worried about the risk of train derailments and resulting collisions with vehicles, as well as other passenger or freight trains, as such incidents pose a serious threat of catastrophic damages for Martin County citizens. Again, this risk of collision or derailment is **not** hypothetical. On February 11, 2017, an AAF passenger train derailed during a test run, causing hundreds of thousands in damages and raising further questions as to the safety of the AAF trains and their failure to notify the public about the event.

Another safety issue is the potential for a devastating chemical release in Martin County. To make this point, I would like to put up a visual.

In 2015, my team conducted a Vulnerability Analysis to analyze the potential impact of a railcar crash resulting in a chemical release in Martin County, using software available from the U.S. Environmental Protection Agency and analyzing chemicals typically transported on FECR freight trains. In this slide, we see the potential for catastrophe based on the accidental release of just **one** chemical on **one** freight car in the rail corridor where — if the AAF project proceeds — these faster freight trains will be sharing the tracks with high speed passenger trains.

The analysis shows the potential for **significant harm** should an incident occur on the tracks within Martin County. The degree of impact would vary based on the specific chemical release, amount of the release, the location and the wind conditions, but, as you can see, the potential for catastrophic harm is very real.

Mr. Chairman, the FRA approved a \$1.15 billion bond allocation for this project based on a FEIS and ROD that contained **critically deficient** safety analyses and recommendations. Given the track record of injuries and fatalities within the rail corridor, the FRA's decision to approve the Project without the safety measures we have sought is both startling and dangerous.

Mr. MEADOWS. Thank you, Chief.
Mr. Reingold, you're recognized for 5 minutes.

STATEMENT OF DYLAN REINGOLD

Mr. REINGOLD. Thank you, Chairman Meadows.
Thank you Ranking Member Connolly.

Mr. MEADOWS. You may want to pull that a little bit closer. We're getting older and our hearing is not quite as good as it used to be.

Mr. REINGOLD. Thank you for allowing me to testify today. My name is Dylan Reingold. I'm the county attorney for Indian River County.

Indian River County is a small county located on the east coast of Florida. It is south of Kennedy Space Center and north of West Palm Beach. We have approximately 146,000 people who live in Indian River County, mostly in the population centers of the city of Vero Beach and Sebastian.

As you may know, All Aboard Florida's proposed Brightline service will travel from Orlando to Miami, with stops in Fort Lauderdale and West Palm Beach. It will then zip through Indian River County and our 31 at-grade highway railway crossings and near businesses and schools and residences at over 100 miles an hour.

Please understand that safety is our biggest concern. However, that issue will be addressed by other speakers today. I will, therefore, focus upon the financial impact that All Aboard Florida will have upon local governments like Indian River County.

The higher-speed passenger rail project is subject to the National Environmental Policy Act. In NEPA documents, the Department of Transportation has stated that it expects Indian River County to pay for the maintenance of safety improvements at at-grade crossings for eternity.

Let me repeat that, because that is very important to my community. The United States Department of Transportation and the private company funded by a Japanese hedge fund expect Indian River County and other local governments to pay for the maintenance of those safety improvements at the crossings in eternity.

We know where this theory originated. Indian River County currently has license agreements with the Florida East Coast Railway for the crossings within the jurisdiction.

The truth is FECR has these agreements with local governments up and down the east coast of Florida. That is because the railroad, which was built approximately about 1925, existed long before the highways and roads that were necessary to support a population that has since grown by 10,000 percent.

So Indian River County, like our sister communities to the north and south of us, have funded this arrangement with FECR for many years, which, may not necessarily be fair, represents the status quo.

Now, All Aboard Florida is demanding to piggyback off these arrangements and to change the terms of the deal. This cannot be permitted. This is an unfunded mandate upon the local governments.

First, All Aboard Florida is not an affiliate company, it is not a sister company of FECR. It is a separate company.

Second, the speed of All Aboard Florida is nothing—well, at least it was not contemplated when these agreements were executed by the parties. The existing railway corridor in Flagler's east coast railway time period has never had a higher-speed passenger rail system. The original service was slow, it had many stops. It ceased to exist in 1968. And the evidence of this is that you have 159 at-grade crossings in populated areas between West Palm and Cocoa.

To allow for the increase in speed is unconscionable. These trains will travel at more than three times the average speed of the current freight trains today. And the steep increase in these speeds mandates the need for improvements at the highway grade crossings.

While All Aboard Florida has recently offered to pay for the installation of these improvements, it still expects and demands that local governments, like Indian River County, pay for the maintenance of these facilities forever. An initial cost estimate performed by Indian River County estimated that this will cost Indian River County approximately \$8.2 million through 2030, which is a significant sum of money for a small county like ours.

In closing, I want to say that Indian River County prides itself on being a fiscally conservative county. We keep our taxes low. We limit the size of our government. But we won't be able to limit the cost that we spend on the maintenance of these facilities. That is because local governments like ours have absolutely no control over the cost of the maintenance for these facilities.

So in closing, I specifically want you to remember two things. One, we are concerned about safety. And two, we do not want the bills for these safety and maintenance costs to come from the pockets of our constituents. That is unacceptable.

Thank you very much.

[Prepared statement of Mr. Reingold follows:]

STATEMENT OF
Dylan Reingold, County Attorney
Indian River County, Florida
BEFORE THE
House Committee on Oversight and Government Reform
Subcommittee on Government Operations
HEARING ON
All Aboard Florida/Brightline
Thursday, April 19, 2018

Thank you, Chairman Meadows, Ranking Member Connolly and Members of the Subcommittee, for inviting me to testify today. My name is Dylan Reingold. I am the County Attorney for Indian River County. Indian River County is located on the east coast of Florida in the Treasure Coast, south of the Kennedy Space Center and north of Palm Beach County. Indian River County has approximately 146,000 people, many located in and around the population centers of the City of Vero Beach and the City of Sebastian.

As you may know, All Aboard Florida's proposed Brightline service would be a higher speed passenger rail system proposed to travel between Miami to Orlando, with stops in Ft. Lauderdale and West Palm Beach. All Aboard Florida will zip through Indian River County, and its 31 at-grade railroad-highway crossings near schools, churches, businesses and residences, at over 100 miles per hour. Our community has significant concerns related to the safety of this project. That issue, however, will be addressed by other speakers today so I am going to focus on the financial burden All Aboard Florida's Brightline system will place on Indian River County,

the State of Florida, the federal government, and every other local government along its projected path.

In 2013, All Aboard Florida claimed to be a privately owned, privately funded project. As a conservative County, the Board of County Commissioners thought this was fair. However, after meetings with the executive team for All Aboard Florida and its parent company, Florida East Coast Industries, it became apparent that this “private company” intended to pay for its “private project” with subsidies from the federal, state and local governments. Importantly, while the U.S. DOT and the State of Florida have chosen to fund this venture, local governments, like Indian River County, are not being given a choice – and are being mandated to pay for portions of this project.

The underlying higher-speed passenger rail project is required to comply with the National Environmental Protection Act (NEPA). In the NEPA documents, the U.S. DOT expressly stated that it expects Indian River County to pay for the costs to maintain the necessary safety improvements at all of the at-grade railroad highway crossings in perpetuity without any legal basis for this conclusion. Let me say that again because it is very important...the U.S. Department of Transportation as well as this privately owned company that is ultimately owned by a Japanese hedge fund, Softbank, expects local governments like my community to pay for the maintenance of its “private” passenger rail project for eternity.

We know where this payment theory originated. Indian River County currently has license agreements with the Florida East Coast Railway for each of the at-grade railroad highway crossings within its jurisdiction. The truth is, Florida East Coast Railway has these

agreements with all of the local governments up and down the east coast of Florida because, in most cases, the railroad—built around 1925—existed before the highway and roads necessary for a population that has since grown 10,000 percent. Indian River County, like its sister communities to the north and south, has funded this arrangement with the FEC Railway for many, many years, which not particularly fair, represents the status quo.

Now All Aboard Florida wants in on this arrangement. Not only is it seeking to piggyback off of these pre-existing agreements. It wants to dramatically change the underlying terms. This cannot and should not be permitted! It is an unfunded mandate unilaterally dumped on the local taxpayers.

First of all, All Aboard Florida is not an affiliate or sister company of Florida East Coast Railway. All Aboard Florida is a separate company.

Second, the speed of All Aboard Florida's Brightline service is unlike anything ever contemplated when the FEC crossing agreements were signed. Contrary to what All Aboard Florida has told the federal government, and likely members of Congress, the existing rail corridor has never in the history of Flagler's Florida East Coast Railway seen a higher speed passenger rail system. The original passenger rail service was slow and had stops all along the corridor. It ended in 1968. This is evidenced by the current design of the Florida East Coast Railway corridor, as it has approximately 159 at-grade railroad highway crossings that traverse through populated urban areas between West Palm Beach and Cocoa, Florida. The idea of operating a higher speed passenger rail at speeds up to 110 mph through these now urban areas is simply unconscionable. It is more than three times the average speed at which the FEC

trains operate today. This steep increase in speed will result in the need for additional safety improvements at all of the at grade railroad-highway crossings. While, All Aboard Florida has promised to pay for the initial installation costs of these safety improvements, its parent company, Florida East Coast Industries, has made it clear that it will only do so in exchange for Indian River County's agreement to pay for the costs of maintaining such facilities in perpetuity. An initial calculation performed by Indian River County estimates that these long term maintenance costs will be \$8.2 million through 2030 for our community alone—a significant sum for our small County. Consequently, the local taxpayer in Indian River County will be paying for the permanent safety improvements for this passenger train, forever. Payments in perpetuity for a train that does not stop here, but does bring clear and significant threats to our community.

In closing, I want to take this opportunity to say that Indian River County prides itself on being a fiscally conservative community. The Board of County Commissioners does everything it can to keep taxes low and limit the size of government, but we will be unable to limit the future costs of this project on our local taxpayers. This is because Indian River County has no say whatsoever in how much those safety costs will be. So when you hear All Aboard Florida say that we are a bunch of NIMBYs, or that we are angry because we do not have a stop in our community, I ask that you remember two things—we are opposed to Brightline because it is not safe and because All Aboard Florida is seeking to pay its bills with taxpayers dollars from the pockets of our constituents. This is not ok. Not now. Not ever.

Mr. MEADOWS. Thank you, Mr. Reingold, for your testimony.

As a personal note, probably way before your time, some 40 years ago, when there was a younger, thinner, more agile individual, I used to take highway 60 across from Brandon Florida, to surf at Sebastian Inlet. And so that was my indoctrination to Indian County.

I'll now recognize the gentleman from Florida that has been a strong advocate, along with the gentleman to his left, Mr. Posey, on this particular issue, the reason why we're having this hearing, Mr. Mast, for a series of questions.

Mr. MAST. Chairman, I'm going to have to think about you with surfer hair for a while now.

Thank you all for being here.

Mr. Goddard, I thank you for taking the time to be here for this hearing. Just with a couple of for-the-record questions.

Do the All Aboard Florida trains currently operate in speeds of excess of 150 miles per hour?

Mr. GODDARD. No, they do not.

Mr. MAST. Thank you, sir.

Mr. Burtney, did the Department of Transportation approve \$1.15 billion in private activity bonds to All Aboard Florida as a qualified highway or surface freight transfer facility?

Mr. BURTNEY. Yes.

Mr. MAST. Thank you. I'd like to think that if Congress wanted to fund trains through the private activity bond process outside of those that are high speed, those in excess of 150 miles per hour, they would have put that into the list of 15 eligible projects for private activity bonds.

Mr. Burtney, Section 142, Title 26, it does define eligibility for private activity bonds: A qualified highway or surface transfer facility is any surface transportation project which has received Federal assistance under Title 23.

So I want to ask, did any Title 23 money go to the All Aboard Florida project?

Mr. BURTNEY. Thank you for the question, Congressman.

In the application from All Aboard Florida that the Department of Transportation received, All Aboard Florida indicated that over 2012, 2013, and 2014 Title 23 funds were used on the corridor. That was after the announcement from—

Mr. MAST. The corridor or the All Aboard Florida project?

Mr. BURTNEY. I'm sorry?

Mr. MAST. The corridor being FEC corridor or the All Aboard Florida project specifically?

Mr. BURTNEY. The corridor on which the All Aboard Florida trains will run.

Mr. MAST. So if All Aboard Florida did not specifically receive funds, I would wish that the Department would withdraw their award letter for private activity bonds.

But I would ask, was there actually moneys distributed or deposited to All Aboard Florida specifically, that project? Were there moneys distributed into an account for a surface transportation project to All Aboard Florida?

Mr. BURTNEY. The Florida Department of Transportation manages Title 23 funds in the State of Florida.

Mr. MAST. So are you saying not to the best of your knowledge were dollars specifically put into an All Aboard Florida account, they went to FDOT, Florida Department of Transportation?

Mr. BURTNEY. We are not aware of any funds going to an All Aboard Florida account; however, the application which the Department of Transportation reviewed did indicate that funds were used by the Florida Department of Transportation from Title 23 on the corridor on which the All Aboard Florida trains run, enabling it to be eligible for assistance under private activity bond statute.

Mr. MAST. Thank you for that. And I think this is an important point of what we're getting at here, and it has a very broad implication for what goes on with private activity bonds across the breadth of this country. This is the problem.

Congress has given a list of projects to provide private activity bonds to. As it relates to rail, Congress said very specifically high speed rail, over 150 miles per hour. You said, for the record, that's not you. We're not disputing that. Nobody is.

So what we're using here is this kind of doublespeak that I think often ticks people off, where everybody is labeling this train something that it's not. We're saying because it once, in one section of the corridor, not even the same project, had some infrastructure upgrades done to the project, that by that rational an intersection was fixed somewhere on the rail, that an entirely new project is subject to being eligible for private activity bonds. And I think that's what we're getting at here.

I would like to get to something else very quickly here.

Mr. Goddard, All Aboard Florida CEO Mike Reininger testified in June of 2017 on the T&I Committee that I sit on. He testified to me that All Aboard Florida is not publicly funded at all, it is completely an investment of private sector capital.

However, Brightline's private activity bond application from December of 2017 reads: The project has received financial assistance under Title 23, that is the Federal assistance, and eligibility for private activity bonds under Title 26 mandates that the financial assistance is, in fact, Federal assistance.

So my question would be, when the CEO, Mike Reininger, testified before T&I in that time, was he lying to me when he said that the Brightline project hadn't received any Federal funding? Or was there a lie to the Department of Transportation on the application in saying that private activity bonds are eligible because they have received private assistance? That to me sounds like two completely different answers.

Mr. GODDARD. No, he did not lie. He do not lie to you. That funding was relative to safety improvements.

Mr. MAST. And with that, my time has expired, and I will yield back. Thank you.

Mr. MEADOWS. The chair recognizes the gentleman from Virginia for a series of questions.

Mr. CONNOLLY. I thank the chair.

I thank the panel for being here.

Mr. Burtney, we heard the testimony. Mr. Crandall says, *inter alia*, that this is a misuse of PABs, and it's pretty clear in the code this the a circumvention of that.

Chief Wouters talks about safety, that there are inherent safety problems giving at-grade crossings, multiple at-grade crossings, that put the public at risk, and were never intended—never intended—for a train of this kind of capacity, speed-wise, putting the communities at risk.

Mr. Reingold makes an argument that, as somebody who comes from local government, I can sympathize with, that in effect, whether by design or not, approving this project puts a permanent unfunded mandate on local governments to maintain whatever safety measures are put into place or not put into place from now until the end of time.

Any of these concerns factor into the decisions at the Department of Transportation about this project?

Mr. BURTNEY. Thank you, Congressman.

So to be clear, the Department of Transportation's responsibility in providing an allocation for private activity bonds is to determine statutory eligibility. And the Department has historically interpreted any surface transportation project that utilizes Title 23 funds to be eligible for the phrase "qualified highway or surface freight facility."

Mr. CONNOLLY. Mr. Burtney, is it your testimony that upon that examination, irrespective of these concerns, the Department determined it was qualified?

Mr. BURTNEY. The Department determined that the application met the statutory eligibility to being able to use private activity bonds.

Mr. CONNOLLY. So not to create the argument, because I don't wish to have the litigation by surrogate here, but so you take direct issue with Mr. Crandall's testimony that it most certainly does not? Those are two pretty different interpretations of the code.

Mr. BURTNEY. We do take issue with his interpretation. Our interpretation is that by statute any surface transportation project, which obviously a passenger rail train is a surface transportation project, any surface transportation project that utilizes Title 23 funding is then eligible as a qualified highway or surface freight transportation project.

Mr. CONNOLLY. Mr. Goddard, you heard the testimony of the three folks to your left. What is the reaction of Brightline to the substance of these concerns in terms of unfunded mandates, safety, and for that matter, eligibility?

Mr. GODDARD. Thank you, Congressman.

So we've been questioned on these issues for several years. We've been through several lawsuits on PABs, on safety, on whether or not we meet the criteria. We have prevailed up until this point. We continue to engage in dialogue with our opponents relative to these issues, and we seem to be talking past each other.

Mr. CONNOLLY. But I'm asking a different question. Holding in abeyance for litigation and who is an opponent and all of that, I'm familiar with lots of different passenger rail systems, commuter rail, for example. And I'll take the western suburbs of Chicago, one I'm quite familiar with. They don't go 110 miles an hour.

Mr. GODDARD. Yeah.

Mr. CONNOLLY. They have a lot of at-grade crossings, but they also have safety provisions in place. And they can live peaceably

side-by-side. And in fact communities have grown up around the stations and it's almost a way of life, but it works. But it wouldn't work at 110 miles an hour, I don't think.

So what is your substantive reaction to——

Mr. GODDARD. Yeah.

Mr. CONNOLLY. If I had, I think you said Mr. Reingold, 39 crossings?

Mr. REINGOLD. Ranking Member, we have 31.

Mr. CONNOLLY. Thirty-one.

So if I'm a small county and I got 31 crossings, I have a legitimate concern about safety. What are you going to do about that? How can you help us address that, ameliorate that concern?

Mr. GODDARD. Again, safety, the safety of train travel has been demonstrated, and, again, as substantially safer than traveling by car.

I can tell you that passenger rail happens every day in this country, all over this country. Our corridor meets the sealed corridor requirements as determined by the FRA.

We don't actually set——

Mr. CONNOLLY. Mr. Goddard, with due respect, that's a very bureaucratic answer. I asked you, what are you doing to try to ameliorate the concern in the case of Indian River County?

Mr. REINGOLD. Yes, sir, Indian River County.

Mr. CONNOLLY. It's a legitimate concern. I'm worried about kids. I'm worried about people.

Mr. GODDARD. Sure.

Mr. CONNOLLY. And so how is Brightline trying to ameliorate that concern in a reasonable way?

Mr. GODDARD. Sir, we have spent the last 4—about 4 years ago, when we started this project, in conjunction with USDOT and FRA, we went crossing by crossing with each municipality all the way up the corridor to determine what was the properly prescribed safety equipment to implement at each crossing—crossing-by-crossing—to make sure that we implemented the right safety equipment.

Furthermore, all of that safety equipment was implemented at our expense, which is, again, above and beyond what is required of us. So we feel that we have done more than is required of us at every step of this process.

Mr. MEADOWS. You're still not answering the gentleman's question. I mean, speak to the question.

Mr. GODDARD. Okay. So we, again, we feel that we have met the demands already of these groups. We've had discussions, we've had dialogue with them, and we've met their demands.

So if there are additional discussions that my colleagues would like to engage in relative to their needs, we're prepared to have those discussions. But up until this point, we feel like we've addressed all of the concerns.

Mr. CONNOLLY. All right. I don't wish to impose, but if the chair will just indulge one last question to Mr. Crandall, because I was intrigued by your testimony, Mr. Crandall.

You've obviously done a lot of homework. You've heard the testimony of Mr. Burthey that our review at DOT, this meets the criteria. You want to just take a moment to perhaps rebut that or give your elaborated view of why they're wrong?

Mr. CRANDALL. Thank you for the opportunity, sir.

Mr. CONNOLLY. And then I yield back. I thank the chair.

Mr. CRANDALL. I think Mr. Mast has put his finger on the issue. The rule is quite clear, and that is that a project which has benefited or received funds under Section 23 might then be eligible. But the fact is, All Aboard Florida has not received such funds, as Mr. Mast, I think, quite aptly pointed out.

Such funds have been used in prior years to improve the crossing, the point where the road crosses the tracks, perhaps to put paving, et cetera, et cetera, whatever what might have been done. But it was a long time ago. And that's an entirely different project for All Aboard Florida.

Thus, it is quite clear to me on the reading of the statute that All Aboard Florida is not eligible. It is a railroad and it isn't eligible under any of those 15 categories.

Mr. MEADOWS. I thank the gentleman from Virginia. The chair recognizes the gentleman from Florida, Mr. Posey, for a series of questions.

Mr. POSEY. Thank you very much, Mr. Chairman, for holding this hearing, and, Mr. Ranking Member, I want to thank you for agreeing to it, and, Congressman Mast, I want to thank you for requesting this hearing. You know, the proposed Brightline service will run through the heart of many of my communities in my district. Obviously, I have a lot of concerns and questions. I have seen the data from the Federal Railroad Administration Accident Database that shows that during the period of 2007 to 2018 there was an average of 13.5 rail crossing deaths per year in Florida.

In the short time Brightline has been operating during Phase I you have already recorded six such fatalities, almost 50 percent of the annual Florida average. This abysmal performance suggests a serious safety deficiency and should be immediately remedied. One of the questions I am going to have for Mr. Goddard when I am finished here if you would write this down now and remember to respond to it is I would like you to share with me your firm's plan to mitigate the increased risk to pedestrians and vehicles at rail crossings.

I read the summary of comments on safety in the 2015 environmental impact statement for All Aboard Florida pages 1 through 23 of that document. Quite a few residents worried about the safety of grade crossings under the new train service are evident. The Federal Railroad Administration's response was completely puzzling. The most troubling was the response that these safety concerns are covered by FRA safety standards, and therefore, not subject to the National Environmental Protection Act, so we have got to worry about protecting everything in the doggone world except humans.

You know, Mr. Burtney, I appreciate you showing up today. I have written your agency twice with some serious questions about safety concerns, and I have received responses only from the FRA, and I still get very, very poor service and response from your agency at addressing some of the serious safety issues that we have before us here.

You know, I am puzzled how your agency can possibly consider a highway and a railroad the same thing. I mean, what can you

drive on a highway? A bicycle, a motorcycle, an automobile, a truck. What can you drive on a railroad track? If you don't have a train, it is no help to you, you know? Maybe you can buy a ticket, you know, one way to——

Given that the NAPA requires the agency to assess the impacts of the human environment, surely we don't intend to cut off the process without mitigating for increased risk to pedestrians and drivers. I am very puzzled about the rationale for not analyzing and addressing safety in the environmental impact statement, obviously, and at the end, Mr. Burthey, maybe you can give us some further insight and wisdom on that.

Construction of Phase II of the project, which will bring the train through my district, through Indian River County and Brevard Counties has yet to happen. Many narrow-minded residents, as you call them, Mr. Goddard, are understandably nervous, especially those residents whose homes back right up to the train tracks. There are schools and businesses that are in close proximity to this train, and, Mr. Chairman, with your indulgence, I would like to ask for unanimous consent to include seven images showing how close in proximity this train runs through my constituents' homes, schools, and businesses.

This is a photograph of the crossing at Vero Beach looking north. This one of downtown Melbourne. I can't imagine a high-speed train going through there. This is one of Stuart. This is St. Lucie crossing. This is downtown Vero Beach looking from the east. And these are residents that setback up to the line.

Mr. CONNOLLY. Without objection.

Mr. MEADOWS. I thank the gentleman.

Mr. POSEY. Thank you. Shouldn't we open up the process to reexamine the safety issues in collaboration with the public? You know, we get a pledge maybe to do that today.

It is my understanding that All Aboard Florida plans to have local governments like my constituents in Indian River County pay for the maintenance of the safety equipment necessary to operate as passenger and rail trains across hundreds of at grade crossings. This is basically an unfunded mandate from the Federal Government on local government, something that we always swear that we won't do, and we inadvertently sometimes end up doing that, and this would be a horrible injustice.

And given that we are providing substantial support to AAF and the requirements for new safety equipment due to Brightline service shouldn't the capital and operating costs of safety equipment be paid for by Brightline, the people who benefit from it?

Mr. Chairman, let me tell you how I found out about Brightline about this All Aboard Florida. For several years representatives came through and said, look, we are going to put in a high-speed rail. Here is our plan. We don't need any government assistance. We don't need any government approvals. We are doing this completely in-house. We are authorized completely to do it. It is all on our own. We are just telling you for informational purposes so you will know what is going on through your district.

That went on for 3 or 4 years, and then I am asked to sign a letter executed by Mr. Mast's predecessor putting them at a high

priority for a RRIF loan, and I go, well, I thought you guys were doing it—well, yeah, our plans changed. Yeah, they sure do change.

So when we had a transportation bill come through on the floor I thought it would be appropriate to have a couple of amendments, you know, one that you should have the approval of at least majority of your local elected officials to do something like this, and we should also limit the amount of the loans. This would be—I think they were asking for \$1.7 billion at the time, the most humongous loan in the history of RRIF loans, and, of course, follow the law because at that time they hadn't gotten somebody to sandwich in a glitch fix for them because they didn't meet the criteria for the money that they were asking for.

Of course, I met with a lot of strong opposition. One of their strongest supporters and advocates, a Member of Congress who is now in Federal penitentiary, said twice shame on me for asking the railroad to actually follow the law. And the floor was flooded with colorful handouts of misinformation about the rail, and of course, the amendments didn't pass. They should have, but they didn't. I have correspondence from my local officials asking them—they were asked by Brightline to write nasty letters to the editor about me calling me narrow-minded and some of the things to quote Mr. Goddard, and I just think this attempt to do this is everything but straightforward and upright.

I believe they tried to sell some bonds before, but they couldn't sell them, and so now that has changed. You know, you wonder how fast these trains travel through these little villages? Even at 70 miles an hour the consequences can be horrific based on how long it takes to stop one of these doggone things, and, you know, I think we have been called narrow-minded and not in my backyard people, and, you know, I think a lot of people would support a rail if it didn't go through the middle of their downtowns and our neighborhoods and if it was actually safe, which this clearly is not.

My own experience and I think yours and other Members of Congress we were recently in a train accident, and I was advised by one, the reason for the accident even though the guards work is the guys in the truck, one of whom lost his life, were used to seeing coal trains coming around that corner about 30 miles an hour, and they thought they would have plenty of time to get across. They weren't, you know, accustomed to having our Amtrak come through there at 60 to 70 miles an hour, and the result was tragic just like it will be in many, many communities in my district and Congressman Mast's district.

So, you know, I have heard a lot of talk about overwhelming support for the project. Man, I sure as hell haven't seen that, and I don't think it is overwhelming support that you are able to sell any bonds before. I don't think people are all stooges, you know, and they are not that stupid to invest in a train. We don't have any lines like this that make any money. The Federal Government has to subsidize them.

The problem with the RRIF loan is after you guys would go broke on passenger rail if that was your real agenda then what collateral really usable collateral, safe collateral would the Federal Government have? So my question to ask you right now under oath is, Mr. Goddard, what is your real agenda here?

Mr. GODDARD. Congressman, I am not sure which of your questions to address first.

Mr. POSEY. We can do the agenda question first so we don't forget it.

Mr. GODDARD. Our agenda is to improve mobility for millions of visitors and residents of South Florida.

Mr. POSEY. Is there a reason why somebody would get off an airplane if they were going to Miami, they would get off an airplane that could get them to Miami in an hour and get on a train that would take them two hours to get there, and they would have to do their luggage back and forth in a train? I mean, is the model looked at that as being a realistic expectation? And would somebody in Miami going to Orlando or going past Orlando sacrifice an hour flight to get on a train and unload and load?

Mr. GODDARD. Our business case, which Mr. Crandall to my left has made on many occasions is there are many corridors that are from 200 to 350 miles apart that are too short to fly and too far to drive. There are 400 million trips between Central and South Florida on a daily basis, and, yeah, we believe that we can capture a good share of those.

Mr. POSEY. Well, if it just stayed in South Florida obviously I wouldn't have an interest in this thing, but it is not just in South Florida, it is in East Central Florida, which affects our districts, and as I said before, if you were following a path west to I-95 where there was less population and weren't running through the middle of our downtowns and our school areas and it wasn't a safety effect we would probably think that was great idea, but, you know, do we want to sacrifice—and I think the answer is no from my standpoint—the safety of our local residents for your profit and convenience?

Mr. GODDARD. So if I could respond to that, there was a 2015 report commissioned by Indian River County to study the safety impacts of Brightline, and their own consultants concluded that we can find no decrease in grade crossing safety with the advent of All Aboard Florida. To Indian River County's benefit, the additional capacity improvements, other additional infrastructure, safety improvements, upgraded crossing warns devices, which are regulated by the FRA, implementing suggestions for quiet zones, fencing, pavement markings, a public awareness campaign, and a finding of no additional closure time with the additional trains, draws a conclusion that there is no adverse safety impact to Indian River County from All Aboard Florida. If the proposed upgrades actually occur they will improve and update the safety factors that exist today.

I would also like to add that, again, passenger rail happens in this country every day, and, you know, in Detroit—Detroit to Chicago that route has a similar number of grade crossings as Brightline and runs at grade. St. Louis to Chicago has 213 crossings that have been upgraded. Trains travel at 110 miles an hour through dense urban areas on those corridors, as well.

Mr. POSEY. Well, I submit to you that sometimes a picture is worth a thousand words, and your remarks about this being safe crossings in Indian River County and St. Lucie County don't pass a straight face test.

Mr. GODDARD. So if I may, Congressman, that is a picture of where exactly?

Mr. POSEY. This is Vero Beach crossing.

Mr. GODDARD. So obviously we haven't made any improvements there yet. We haven't actually begun construction on that segment.

Mr. POSEY. So, you know, like there is less than—room for one car to back up over here, and of course, I have seen them even for the little local trains backed way up over here. How would you propose to make this crossing safe?

Mr. GODDARD. Again, that is actually determined by the Federal railroad authority and USDOT in conjunction with your community leaders. So again, we over the last 4 years met with your community and determined exactly how to do that. Sitting here today, frankly, I'm not—you know, I don't have the answer at my fingertips, but the net is there will be improvements on there that comply with the FRA's sealed corridor guidelines and our States and other municipalities.

Mr. POSEY. You're going to require these local governments to maintain these crossings forever, yet your train is not going to stop in any of these communities. They get absolutely no benefit whatsoever from your train, yet they're stuck with the liability of it. You know, how do you possibly think that that's fair and reasonable?

Mr. GODDARD. So for those who may not—for those who may not know, our right of way predates, you know, the communities through which we travel. Correspondingly, there are decades-old agreements between each municipality up and down the corridor, as each community asked if they could put a road across our railroad.

When we granted communities that right to transverse our railroad we—the cost of creating the gates, the bells, the whistles was actually—that burden was on the community.

Mr. POSEY. Well, when you said, "we," you didn't make those agreements. Flagler made those agreements. You know, you're an international hedge fund now. I mean, you had no dog in the fight at that time, and those agreements are probably 100 years old. Obviously they were intended for not high speed trains going through their little towns, but trains that would actually stop in their towns, if necessary, and help promote their commerce and passengers at one time.

Mr. GODDARD. It sounds like you might like a stop.

Mr. POSEY. You know, that wouldn't appease me. I know that has been one of the latest, you know, things that they have thrown out from saying absolutely, positively there will never, ever, ever be a stop in this high-speed rail because then it wouldn't be a high-speed rail. To appease some critics I understand you have lately been saying, well, we might have a stop in your town and we might have a stop in your town, but we know that's not going to happen because then it would take a 5-hour ride on a high-speed rail to get from Miami to Orlando, and, you know five times longer than the airline flight.

Mr. MEADOWS. So go ahead, you can respond to that. We are going to do a second round of questioning, but you can go ahead and finish up on any response that you have, Mr. Goddard.

Mr. GODDARD. Thank you, chairman. So just for the record it is important to understand that there are longstanding agreements, and, in fact, the responsibility to improve the crossings are actually the municipalities, as well, although we have actually taken on that financial responsibility up and down the corridor. We have improved all of the crossings up and down the corridor. We have done that on our dime. We have not asked the municipalities to participate in that, but yes, they do need to continue to pay the maintenance that they agreed to pay.

Mr. MEADOWS. All right. I thank both the gentlemen from Florida. We'll come back and let you ask a second round of questions. The chair recognizes himself for a series of questions.

Mr. BURTNEY would you agree that this does not qualify under number 11 on the statute 26 U.S.C. Code. It is not a high-speed rail project. Is that correct?

Mr. BURTNEY. Yes, sir, I would agree with that.

Mr. MEADOWS. Okay. Would you agree that it does not qualify as highway under that same statute?

Mr. BURTNEY. The Department of Transportation does believe that it qualifies under—

Mr. MEADOWS. So you're saying the Brightline rail project is a highway, that's your sworn testimony?

Mr. BURTNEY. We are saying that the definition of a qualified highway or—

Mr. MEADOWS. That's not what I asked you. Is it a highway or not?

Mr. BURTNEY. It fits the definition under the statute.

Mr. MEADOWS. Well, it is interesting you say that because the definition under your guidelines and under the code would indicate that it is a surface transportation project. Now, I serve—I happen to serve on the Transportation and Infrastructure Committee. Secretary Chao would agree that surface transportation are not rail, and so you're at odds with your own Secretary on that.

Mr. BURTNEY. Again, our interpretation longstanding of the statute is that any service transportation project, including passenger rail, which utilizes Title 23 funds does qualify under—

Mr. MEADOWS. So how much Title 23 funds does somebody have to spend in order to qualify?

Mr. BURTNEY. The statute does not specify.

Mr. MEADOWS. So a dollar?

Mr. BURTNEY. Theoretically, yes.

Mr. MEADOWS. So do you believe that that was the intent of Congress? I can tell you it wasn't. This is a softball answer. The intent of Congress was not for a dollar of Title 23 money to be able to qualify them for a PAB, and so, if you're going forward, and as you go back to the Department of Transportation if that's their interpretation that a dollar qualifies them, then everything qualifies because anybody would spend a dollar to say I can get some tax exempt money from the Federal Government, wouldn't you think?

Mr. BURTNEY. Well, what I would say is that private activity bonds are a very useful tool to minimize the Federal dollars that are required at a project. So they enable us to fund projects without having to—

Mr. MEADOWS. Listen, you're preaching to the choir here, so let's dispense with that. I actually support private activity bonds, and in the tax reform package in the House where it was excluded I actually said I wasn't going to vote for it unless we got private activity bonds back in there. As you know, it is part of that. I see the critical tool that it is, but we must also understand that Congress has a certain intent on how those are to be used.

And when the Department of Transportation uses their wide discretion and what qualifies and doesn't—it undermines the very fact of why we have private activity bonds, and it makes Members of Congress like me who have advocated for it say how in the world can you say that one dollar in Title 23 funding would qualify somebody for a PAB?

Is that your sworn testimony here today?

Mr. BURTNEY. Well, this project did receive more than one dollar to be clear. It received—

Mr. MEADOWS. I'm asking—

Mr. BURTNEY. —several million dollars.

Mr. MEADOWS. Does one dollar qualify?

Mr. BURTNEY. Technically under statute under my understanding, yes, it would.

Mr. MEADOWS. Okay. So your sworn testimony is that the intent of Congress was that one dollar would qualify?

Mr. BURTNEY. I cannot speak to the intent of Congress.

Mr. MEADOWS. Well, but you're here to actually convey the intent of Congress. That's the whole reason why you write rules and regs are to take the laws that we pass and actually have the intent of Congress to go forward.

Is there any scenario where you think that there was some Member of Congress who said if you will put up a dollar of Title 23 money that we'll allow you to do \$1.75 billion in private activity bonds? Do you think any Member of Congress could go home and get reelected based on that kind of rationale?

Mr. BURTNEY. Our responsibility is to consistently apply the statute as it is interpreted by our Department and that historically—

Mr. MEADOWS. So how do you do that consistently—that's your word consistently—when there is not a standard of how much money has to be put in in terms of Title 23? So somebody, Mr. Goddard can come up—and listen, it is not my backyard and, you know, they're not going to run high-speed rail to Western North Carolina—well, but I guess under your scenario it would qualify because if they have used—no, it has to be in the State, right, so you're saying that anywhere in the State of Florida they can run a high-speed rail because we have some amount of money for a crossing that was paid some time ago. Is that correct?

Mr. BURTNEY. Well, we are not saying that. What we are saying—

Mr. MEADOWS. Well, where does it stop? It obviously doesn't stop in Orlando, so where does it stop? Does it stop in Jacksonville?

Mr. BURTNEY. So here specifically the Title 23 funding was spent after All Aboard Florida announced their plans—

Mr. MEADOWS. For what? For what?

Mr. BURTNEY. For grade crossing improvements.

Mr. MEADOWS. For grade crossing improvements where?

Mr. BURTNEY. Along the tracks where the All Aboard Florida trains will run.

Mr. MEADOWS. All along the entire corridor?

Mr. BURTNEY. I do not know the exact grade——

Mr. MEADOWS. I do. I'm asking a question that I already know. So how much of this second phase of this was Title 23 funds used to improve crossings? Do you know that amount?

Mr. BURTNEY. All Aboard Florida's application indicated that subsequent to their announcement of their project in 2012, 2013, and 2014, \$9 million were spent.

Mr. MEADOWS. In this second phase?

Mr. BURTNEY. Along the second phase of the corridor.

Mr. MEADOWS. Okay. And where was that spent?

Mr. BURTNEY. Again, I don't know the exact grade crossings but spent on grade crossings.

Mr. MEADOWS. You have 30 days to get that to this committee. Do you have that? Is that a reasonable request?

Mr. BURTNEY. We do have the information, yes. I just don't know——

Mr. MEADOWS. So is 30 days—I'm looking at your staff to see if that—because it is really their work, not yours, so is that adequate time?

Mr. BURTNEY. Yes.

Mr. MEADOWS. All right. So in 30 days you can get that to us.

Mr. MEADOWS. So let me ask you a little bit further because I do not see this as fitting the definition of surface transportation and not not even under if you read even the statute it doesn't seem to apply, and so at this particular point I have a real concern that the intent of Congress is being overwritten with the private activity bond measure here because it is really all about we wanted cooperation between a State and a Federal entity. And when we looked at this we wanted that cooperation to take place, wouldn't you agree with that, Mr. Burtney?

Mr. BURTNEY. Cooperation was with the State and the Federal entity?

Mr. MEADOWS. Right.

Mr. BURTNEY. That makes sense.

Mr. MEADOWS. And so we want that cooperation, and so what you're saying is is if we fix some kind of road that happens to go over a rail that that automatically qualifies the entire rail project that is going a different direction because a freight transfer system is not what we are talking about here, would you agree with that?

Mr. BURTNEY. So, for example, we would draw a line——

Mr. MEADOWS. Answer the question. Is this a freight transfer?

Mr. BURTNEY. That is a passenger rail system.

Mr. MEADOWS. Okay. So under definition of 15 we now are coming down to part of the definition is is this a surface transportation issue or not, would you agree? That's the only part of this statute that could possibly apply.

Mr. BURTNEY. The statute specifically says that whether or not it is a surface transportation project which receives Federal assistance under Title 23. And again, I reiterate the statement I made before that our conclusion was that it did.

Mr. MEADOWS. All right. So would you suggest that this is not a freight transfer facility? So that's the second part of that——

Mr. BURTNEY. There's a distinction between applying that specific phrase versus the statutory definition.

Mr. MEADOWS. That's correct.

Mr. BURTNEY. The statutory definition of a freight transfer facility includes a surface transportation project which——

Mr. MEADOWS. Well, it actually—that's the third paragraph. I mean, actually I have actually done a little bit of reading here, and any facility for the transfer of freight from a truck to rail or a rail to truck. It is obviously not doing that. Is that correct?

Mr. BURTNEY. It is not doing that, but our definition is under (m)(1)(A).

Mr. MEADOWS. So under (A) is any surface transportation project that receives Federal assistance. So what you're saying is is that you can give money to a highway and build a railroad right on top of it? Because surface transportation—let me just tell you, you know, you may want to say, well, this under the definition—and we have got very high paid lawyers sitting behind Mr. Goddard who would say well anything that is on the surface actually would qualify, is that what you're saying?

Mr. BURTNEY. We are not saying anything.

Mr. MEADOWS. He is shaking his head yes, so

Mr. BURTNEY. It does need to be related to the project.

Mr. MEADOWS. So how is a railroad crossing on a road necessarily being a fraction of the cost related to that?

Mr. BURTNEY. Well, obviously here, given all the safety concerns that have been mentioned, improving grade crossings is of the utmost importance.

Mr. MEADOWS. So what percentage of the project does the Title 23 funding have to be?

Mr. BURTNEY. There is no percentage that's placed in the statute.

Mr. MEADOWS. So everything qualifies for a PAB?

Mr. BURTNEY. Based on our statutory interpretation, yes.

Mr. MEADOWS. Okay. Well, then I would suggest to my colleagues that I guess we need to change the law, and what is going happen is—and I don't agree with that. I understand that your interpretation is that. I think the intent of Congress was very clear, and that was not the intent, but in doing that perhaps the Secretary needs to look at the rules and regs because you will have a real problem continuing on with private activity bonds being there.

Mr. Goddard, let me come to you. You said that the taxpayers are not subsidizing this. Was that your sworn testimony?

Mr. GODDARD. That's correct.

Mr. MEADOWS. All right. So that's one. I don't believe that to be the case, but if that's this case, if the taxpayer has no exposure, and it is of no consequence to the taxpayer, why don't you get private funding for this?

Mr. GODDARD. We certainly could.

Mr. MEADOWS. Well, why don't you?

Mr. GODDARD. Because——

Mr. MEADOWS. Most of this hearing would go away if you did that, so why don't you go ahead and get private funding. It gets

me out of it. It takes a problem off of my desk. And you know what, why don't you go ahead and get your own private funding? And you're saying that you can get the same private funding at the same benefit without the taxpayer having any subsidy in that?

Mr. GODDARD. Yes.

Mr. MEADOWS. Is that what you're saying, Mr. Goddard?

Mr. GODDARD. No, chairman. So the reason why I would love to alleviate you of this burden, however, the reason why we are interested in a financial instrument such as PABs is it is a cheaper cost of money. It is a less expensive cost of money.

Mr. MEADOWS. Well, then it is taxpayer subsidized, so your—

Mr. GODDARD. Sorry, so taxpayer subsidized—again, what is your definition of taxpayer?

Mr. MEADOWS. In your sworn testimony—I asked you to clarify it because I didn't think I heard what you said the first time, and I didn't believe it the first time, and then you reiterated it. There is a benefit to your company that comes at the expense of the American taxpayer, is there not?

Mr. GODDARD. There is a deferral of taxes to investors, but the intent of the PABs—

Mr. MEADOWS. So there's a tax benefit to somebody—and let me just tell you—

Mr. GODDARD. There's a distinction between that and receiving money from the government. This is a loan.

Mr. MEADOWS. I didn't say that you were receiving it. Listen, I'll say this nicely because I have already criticized you for some of your opening remarks. I will say this, that what happens is PABs by their very design are designed to be a tool to make it more affordable for us to do projects with the Department of Transportation. In doing that we have to recognize that there is a Federal component to that. Would you recognize that there is a Federal component to private activity bonds in that that there is a deferred ability under tax law. I can give you the IRS code if you want.

Mr. GODDARD. I am not an attorney, Chairman Meadows. I run the company. We have attorneys who understand these matters far better than I do. You have heard Mr. Burtney's testimony. I feel that I don't have an awful lot to add in this context.

There's a—we have been to court three times on this matter, and I think that we, again, to the extent that we are now in a new lawsuit on this I don't wish to comment further.

Mr. MEADOWS. Well, that's not an option that you have, Mr. Goddard. You're here under sworn testimony, and that's the reason why I'm—it is not a criminal conviction. We can't bring any criminal charges towards you here today, but you do have the responsibility to uphold the truth in your testimony and answer the questions.

Mr. GODDARD. So to the best of my knowledge—I mean, you have heard Mr. Burtney speak about the PABs, and USDOT determined we are eligible. Our legal team has looked at the issue. They also agree that we qualify. We believe we qualify because we receive Section 130 funds.

Mr. MEADOWS. And section—Title 23 funds.

Mr. GODDARD. Title 23 funds. And—

Mr. MEADOWS. Fine, I got your testimony. So Mr. Reingold, you're saying over 2030 that it is going to cost your county 8 point something million. Is that correct?

Mr. REINGOLD. \$8.2 million, Congressman.

Mr. MEADOWS. Is that high, Mr. Goddard?

Mr. GODDARD. Honestly, I'm not sure.

Mr. MEADOWS. Okay. So are you stopping in Indian River County?

Mr. GODDARD. No.

Mr. MEADOWS. Okay. So he is going to have to maintain railroad crossings so that you can get people from one area to another, and it will go through his county—and, listen, I'm all about commerce, and I realize that it is always in somebody's backyard, so I don't know that I have a whole lot of sympathy about it not being in my backyard. These two guys do.

But here's my concern, and it is with unfunded mandates. If you're asking his county and his city to support the maintenance ongoing, and I would see that as a tangential cost to your particular operation, would you not?

Mr. GODDARD. Again, we have existing agreements in place that, again, I don't know what the material increase is from prior to Brightline—

Mr. MEADOWS. So if you're asking their county to spend \$8 million for a new railroad crossing maintenance, do you not see that they wouldn't have to do that unless you were coming through their county? That's an easier question.

Mr. GODDARD. Well, they wouldn't have to do that—I mean, again the road crossings—the road crossings, this is our private property. We are trying to run our business on our private property.

Mr. MEADOWS. And what I'm saying is—

Mr. GODDARD. There is a requirement—

Mr. MEADOWS. I get that. Listen, there's no one—in fact, I can tell you, I'm the most conservative on private property rights of anybody on this dais, I promise you being from Western North Carolina. And at the same time if you're going to do railroad crossings and you're going to ask them to maintain something that they don't get a benefit from, do you not see a problem with that?

Mr. GODDARD. I can see how—potentially.

Mr. MEADOWS. Okay. So here's what I would ask you.

Mr. GODDARD. What I would say though, if I may, chairman. We have actually spent the money on improving those grade crossings. So we did not turn around and ask—

Mr. MEADOWS. I don't disagree, and I have heard that—and let me just tell you, you're going to find that I will be willing to look at the truth in every argument, and I get that because I can see your counsel when the chief was talking about how they were having to spend the money for all these railroad crossings and I could tell your counsel in the back he was shaking his head and saying that—don't ever play poker, by the way—but in doing that, in doing this here's what I'm saying is there are legitimate safety concerns the chief has made and for you to—

Mr. GODDARD. I would love to address those.

Mr. MEADOWS. Well, I know where you're going. In your opening statement you talked about the opioid crisis.

Mr. GODDARD. No, no, no, no, no. I think there are other—there are other actually—there's actual real misinformation, there's actually like a misstatement of some facts there. Like I would love to have a conversation with the chief.

Mr. MEADOWS. We will have a second round. I will give you the opportunity, and if I haven't you can remind me and nudge me to give you the opportunity for rebuttal and I'll be—but here is my concern. If you're asking this county and more specifically their taxpayers to fund the maintenance of railroad crossing in perpetuity and they don't benefit, it has to be at least a cost consideration for this project, and in doing so, and I know you're shaking your head no—

Mr. GODDARD. Just we have agreements in place. This passenger rail is not a new phenomenon.

Mr. MEADOWS. You have a lot of things in place that may be in jeopardy, Mr. Goddard, so let me just suggest to you, let me suggest to you that you come back to this committee with how you're going to address these types of concerns. Are you willing to do that in the next 45 days?

Mr. GODDARD. Certainly.

Mr. MEADOWS. All right. So you're going to come back to the committee on how we are going to address the ongoing maintenance concerns that may happen with—and obviously Mr. Reingold is here for his county, but as we look at some of those other counties if you would do that, that would be very helpful.

With that I'm to go ahead and recognize the gentleman Mr. Mast for a series of questions.

Mr. MAST. Thank you again, Mr. Chairman. Mr. Goddard, does FEC have agreements in place or does Brightline have agreements in place with Indian River County, with Martin County, with St. Lucie County?

Mr. GODDARD. FEC.

Mr. MAST. Is FEC Brightline?

Mr. GODDARD. No. FEC is not Brightline.

Mr. MAST. So then is there new upgrades to these crossings that has to occur as a result of the Brightline crossing, not as a result of the FEC project?

Mr. GODDARD. So I think it is important to clarify Congressman that All Aboard Florida owns the perpetual right and permanent easement to run passenger service on the FEC railway between Miami and—

Mr. MAST. FEC is not Brightline though?

Mr. GODDARD. That's right.

Mr. MAST. And the agreements are with FEC?

Mr. GODDARD. That is correct.

Mr. MAST. The new infrastructure is as a result of the Brightline project, the new expensive infrastructure that Mr. Reingold's county will have to pay for the upkeep of?

Mr. GODDARD. It is shared infrastructure.

Mr. MAST. Got it.

Mr. GODDARD. It's shared infrastructure.

Mr. MAST. And on all of the safety upgrades that were conducted throughout the entire corridor of train I do read on all of them it does say FEC crossing, FEC crossing, FEC crossing for everything, and so it is in that I want to get to the truth in testimony for what I was able to question your CEO on transportation and infrastructure or the truth on the Department of Transportation application and get where we left off before.

As I said, All Aboard Florida's CEO Mike Reininger he testified June 23, 2017, in transportation and infrastructure to me to a question that I asked that All Aboard Florida is not publicly funded at all, but we have been having this entire argument throughout this on whether there is even one dollar of public funding that has gone to this project, which would allow it to qualify even as a highway or a freight transfer facility, and we have gone back and forth.

Is there one dollar, is there not one dollar, is there a limit to it? The testimony to me on transportation and infrastructure was is not publicly funded at all, it is a completely—it is completely an investment of private sector capital.

So I will ask one more time. Your answer before was he did not lie to me. That was your answer before he did not lie to me when he said it is completely private. So on the application was there not truth on the application where you're saying there was public funding used, which would enable you to get these private activity bonds?

Mr. GODDARD. The funding that was received through Section 23 was for what is now the shared infrastructure, and it was intended to improve safety crossings and the safety of crossings throughout the corridor.

Mr. MAST. So you maintain there is public funding in this?

Mr. GODDARD. There has been public funding granted to the corridor.

Mr. MAST. So it was not truthful when you testified to me on transportation and infrastructure.

Mr. GODDARD. Well, again, this was—so there's a distinction between, I suppose, the—I'm not sure of the timing of the funding honestly, Congressman. I don't know exactly when the timing was. I would need to get back to you.

Mr. MAST. Please get back to me.

Mr. GODDARD. Whether the funding preceded the inception of All Aboard Florida or not, I'm not certain.

Mr. MAST. Please get back to me on that.

Mr. Burthey, I want to get to you. So it sounds to me, and I heard you use the word "indicated," "indicated," "indicated" probably at least three or four times as we were talking about the application of FEC Brightline All Aboard Florida, whichever company it was, and it sounds to me as if from their testimony thus far the Department of Transportation did base the eligibility of the decision for private activity bonds on All Aboard Florida's self-reported acceptance of Title 23 funds.

That whole argument of whether there was Federal funding or not Federal funding, whether there was truth or not truth in the testimony on transportation and infrastructure. So did the Department investigate All Aboard Florida's claims in their application at all?

Mr. BURTNEY. The Department does review all components of the application, including the actual use of Title 23 funds that a sponsor claims.

Mr. MAST. Does the Department determine FEC to be Brightline? Are they the same company to the Department?

Mr. BURTNEY. That is not a consideration that the Department makes. Given pending litigation on that issue, I cannot comment further.

Mr. MAST. So the Department does not look at whether one company received Federal funding and whether a completely separate company is applying for private activity bonds. That's not looked at in an application, when one company is claiming that they received Federal funding?

Mr. BURTNEY. Unfortunately, Congressman, I cannot comment further on that given litigation that's pending.

Mr. MAST. Okay. I would hope that you could comment on this being that this is the primary concern of how we are determining whether somebody is eligible for private activity bonds. The Department does seem very unsure of whether All Aboard Florida actually received Title 23 funds or not, and as we said, that's what the application is entirely based on—

Mr. MEADOWS. So, Mr. Burtney—hold on, if the gentleman will yield for just a second. So, Mr. Burtney, are you suggesting that you don't know whether you evaluate that or not?

Mr. BURTNEY. I'm not suggesting that. I'm suggesting that the overlap between FEC and All Aboard Florida is the subject of litigation, and I have been instructed by our counsel to not comment on that matter.

Mr. MEADOWS. So let me ask you this, his question is more generic. Do you typically evaluate whether one entity and another is one in the same? Do you typically do that? Which would not speak to the litigation at bay here or at bar. I mean, do you typically evaluate that?

Mr. BURTNEY. Well, obviously, all applications are very different, and so it would be—

Mr. MEADOWS. Right. So either it is typically evaluated or it is not because all applications are evaluated differently, but you would say do you consider two different entities—to Mr. Mast's point—as one typically? In all your reviews—obviously if you're prepared for litigation you have already looked at this and all of that. Would you typically do that?

Mr. BURTNEY. Well, certainly, Congressman, Mr. Chairman, we do very significantly take a look at the applicant that is requesting private activity bond allocation, but with regard to whether or not when and if he is judged versus another I mean, I think it is difficult to answer that question on an overarching basis. I think it is very situational.

Mr. MEADOWS. Well, can you confidentially get your counsel and certainly with the DOT's help respond to this committee in 30 days with specificity. I see your staff is nodding yes. Is 30 days enough? All right. Thank you. I yield back.

Mr. MAST. Thank you, Mr. Chairman. I'm going to complete with my line of questioning with this, and I would like to go to Chief Wouters for a minute here. In all of your time in looking at safety

issues, have you experienced the push on the county or have you heard, Mr. Reingold, the push on your county to say that because there is uproar about the 32 trains and train horns blowing 32 times in the backyard of everybody or in the downtown of everybody.

Have you been approached by the Brightline project about the fact that there can be quiet zones or that they can be quieted or they cannot below the train horn?

Mr. WOUTERS. Thank you, Mr. Congressman. Yes, we have been approached about them. At this point the county's position is we don't feel that it is a good thing. We recognize the significant change in the train speeds and frequency through the area. It is something that the community needs to have time, if you were, to come to understand how it works.

Much like Congressman Posey mentioned in the incident that happened on the train that you were on, they have to come to understand those changes in speeds affect the way they make decisions, and we don't think that quiet zones are an important thing to put in. We think that all the safety features should be working as normal, not agreeing to those quiet zones.

Mr. MAST. Mr. Reingold, do you have a comment?

Mr. REINGOLD. We have concerns with quiet zones, as well. As we have seen already in South Florida there have been significant accidents and incidents already, and we certainly will take the consideration of quiet zones seriously, but we are very concerned about the safety of this project, and thus, are not jumping instantly into that issue.

Mr. MAST. Mr. Goddard, you did mention quiet zones briefly in your written testimony. Is the possibility of quiet zones something that you push on the localities or encourage to the localities?

Mr. GODDARD. So the quiet zones are completely at the option of the municipalities through which we travel.

Mr. MAST. In order to avoid outrage of a train horn blowing at every interaction in an area do you encourage—have you encouraged the City of West Palm Beach or any other cities to consider permitting quiet zones?

Mr. GODDARD. No.

Mr. MAST. Okay. I don't know if you're aware, but this goes to the point, and I'll finish with this. This goes to the point of the continued cost of this project, not just at the local level or, you know, potentially at the State level, but also at the Federal level, just last week the mayor of the City of West Palm Beach she was in my office and she was very specifically asking me that the Federal Government pay for increased infrastructure at every intersection because they permitted every intersection as a quiet zone as to avoid the outrage in their community of this train travelling through it 30 times, and they now wish that the Federal Government will pay to get those quiet zone permitted intersections up to a higher quality because of the deaths that have occurred.

This is in the area that this train is running and this is just in my opinion another example of where the Federal Government potentially gets on the hook for the cost of this line, not just from where FEC or Brightline is asking for dollars, but where the cities

and the municipalities come and ask for those dollars, as well as especially in the result of safety concerns.

In that, Mr. Chairman, I thank you for the time today and thank you for the hearing.

I thank all of you for your testimony to me. Thank you.

Mr. MEADOWS. I thank the gentleman from Florida. I'm going to recognize the other gentleman from Florida for a probably more straight 5 minutes because I gave him a very generous 5 plus minutes in his opening round. So the gentleman is recognized for 5 minutes.

Mr. POSEY. Thank you again, Mr. Chairman, for holding this, and it is so enlightening. I mean, I'll be eternally tormented trying to figure out how in the world a highway is the exact same as a railroad, and if you can solve that puzzle or you can before I do share it with me because it is—

Mr. Burthey, in 2005 Congress passed the Safe Accountable and Flexible Efficient Transportation Equity Act. I know that sounds all oxymoron, but, you know, we did, and they did. And it created a \$15 billion pool of tax exempt bonds that could be used on eligible taxes and facilities. In order to obtain these tax exempt bonds private sector entities must submit an application for review. And what I'll ask you to respond to in writing since we do have a very limited amount of time here is if you would be kind enough in the next 30 days to let me know if there is a high demand in the private sector for these bonds, how many applications DOT receives, how many applications are typically approved and how many are denied.

Who oversees exactly, precisely who oversees the application review process like name and position numbers. How long a review process for applications typically takes from start to finish. If you could do that. Can you do that in the next 30 days.

Mr. BURTHEY. Yes, sir.

Mr. POSEY. Thank you very much. Generally given that there's a \$15 billion pool that we just talked about, how much do project sponsors request in taxes and private equity bonds?

Mr. BURTHEY. In other words, on average how much—what is the average of our applications?

Mr. POSEY. Yes.

Mr. BURTHEY. It varies wildly. It is always in the hundreds of millions at least and sometimes into the billions.

Mr. POSEY. Okay. And roughly how many requests are we talking about?

Mr. BURTHEY. Over history or in a given year?

Mr. POSEY. In a given year.

Mr. BURTHEY. In a given year? I believe last year we approved somewhere in the neighborhood of four to six.

Mr. POSEY. Okay. In your correspondence to me if you can also briefly walk me through the application process. I know it is set in statute somewhere, but if you would include that in the letter I have another reason for requesting that.

Mr. BURTHEY. Okay. Yes, sir.

Mr. POSEY. Who makes a determination of whether a project fits under one of the 15 categories in 142(A)?

Mr. BURTNEY. The Department does, sir. Ultimately the discretion for the program lies with the Secretary of Transportation.

Mr. POSEY. The Secretary then.

Mr. BURTNEY. Ultimately by statute.

Mr. POSEY. Okay. Typically does the project sponsor have to specify the type of exempt facility in their application?

Mr. BURTNEY. The Department of Transportation only manages the \$15 billion with regard to the qualified highway or freight transfer facility. That's the only definition that applies to the \$15 billion cap.

Mr. POSEY. Okay. So does DOT give any difference to or rely upon the project sponsor's evaluation of how their project is eligible?

Mr. BURTNEY. Yes, we do.

Mr. POSEY. Okay. Mr. Crandall, would you like to comment on the record further about the judge's decision as to the cost of the taxpayers of the subsidy?

Mr. CRANDALL. Thank you, Mr. Posey. In the district court the judge heard testimony as to the probable cost to taxpayers and reached the opinion that the original \$1.75 billion, if granted, would cost taxpayers about \$600 million during the first 10 years of that bond issuance.

Mr. POSEY. Okay. Thank you. Mr. Goddard, is the RRIF loan application still pending?

Mr. GODDARD. Thank you, Congressman. If I could just clarify Mr. Crandall's response.

Mr. POSEY. Okay.

Mr. GODDARD. So the 600 million was actually a number that was formulated by one of Care's consultants. It was not actually—didn't come from the judge. We ran our own numbers. It is probably around \$250 million.

Mr. POSEY. Okay. I'm running out of time here.

Mr. GODDARD. And we actually have—there will be a tax benefit of about \$650 million from that investment of \$250 million.

Mr. POSEY. Back to the RRIF loan, is it still pending?

Mr. GODDARD. Yes. We are actively in the process of applying for a RRIF loan.

Mr. POSEY. And how much is the RRIF loan for?

Mr. GODDARD. \$1.75 billion.

Mr. POSEY. Okay. That is 1.75 billion with a B?

Mr. GODDARD. With a B.

Mr. POSEY. Okay.

Mr. REINGOLD. If I can, Congressman? This is Don Reingold.

Mr. POSEY. Why was the decision made to seek funding through the tax exempt private equity bonds?

Mr. GODDARD. I think as a private entity and stewards of our investor's capital we are going to avail of any, any funding available that's at a lower cost of capital.

Mr. POSEY. Okay. And what other sources of funding has All Aboard Florida used to fund Brightline or attempted to fund Brightline?

Mr. GODDARD. So in addition to, you know, obviously PABs and RRIF are options for us, but should they not materialize, conventional, that's an option.

Mr. POSEY. Okay. Mr. Chairman, I thank you for your indulgence.

Mr. MEADOWS. I thank both the gentlemen for your leadership on this particular issue, and, Mr. Reingold, I think you wanted to respond, and I have not forgotten Mr. Goddard's ability to offer rebuttal on something, but go ahead Mr. Reingold, if you want to respond to Mr. Posey's line of questioning. I think you tried to interrupt him and didn't get recognized, so go ahead.

Mr. REINGOLD. Thank you to the chair. Two points I want to make about the litigation, which has been discussed. First off, there have been a mention that the All Aboard Florida prevailed on all of the lawsuits. I just want to state that the Federal court had found that, in fact, that the court had found that the plaintiffs had adequately alleged the existence of a major Federal action. That was significant win for the counties. Additionally, specifically to the point as asked by the Congressman was that the judge found that over a 10-year timeframe that the amounts to what would amount to a \$370 million to \$600 million cost to the taxpayer, so that was exactly the information that was found and determined by the Federal court, not just by Care FL's consultant, but actually by the court. Thank you very much for letting me clarify.

Mr. MEADOWS. I thank you for your clarification. Mr. Goddard, I think you wanted to speak to the safety issue, if I recall, that you said there was some misinformation out there, and I told you I would come back, and I want to be good to my word there.

Mr. GODDARD. I appreciate that very much, Mr. Chairman. And I want to recognize the good work that all first responders do in our communities, but I would like to just point out that the maximum allowable speed for freight trains are 60 miles an hour, not 70 miles an hour.

You know, this image of chaotic disruption of trains running through the counties is a little bit misleading. You know, freight trains obviously take a lot longer than passenger trains to get through a crossing. It takes us all of about 45 seconds to get through a crossing. It is actually about half the time of a red light.

Brightline would only run 32 trains, far fewer than most systems throughout the country. In South Florida there's already a local commuter system that runs 52 daily trains over 72 grade crossings with no impact on first responders. In one suburban Chicago town they run 102 daily trains at grade. In Long Island more than 800 trains run over 200 crossings.

So again, if we believe that short passenger trains are going to create the kind of disruption that Brightline opponents claim then perhaps we should consider shutting down all commuter and intercity rail systems in the country.

Mr. MEADOWS. Well, obviously we are not debating that particular issue today. That's a little bit of hyperbole, but I will let the gentleman make his case, and point well taken in terms of how quickly it would go through.

Listen, obviously there are three different debates that are going on here. One is the fact that there are some who don't want this bill for any reason whatsoever. I recognize that. There are two other very significant debates that are going on, and it is the proper use of private activity bonds and the way that this has come

about and the safety concerns that create an unfunded mandate for some of our municipalities and counties along the way. Those are two very different arguments that, quite frankly, have a lot more and perhaps less passion behind them, but a lot more material facts, Mr. Goddard, and unless we are able to answer those questions to the satisfaction of the American taxpayer we are going to create problems for Secretary Chao and Mr. Burtney and the others because, quite frankly, what we are doing and what I see this as is the PAB that you're looking at is being used in a way that is not consistent with the original intent of Congress. And your counsel again is shaking his head no, but that's all right.

What we have is we have moneys that was spent for a crossing that goes this way, and we are building with PABs something that goes the exact opposite way. And when we look at that this was all about trying to have a partnership for Title 23 funding along with PABs and other things to create a highway going one way, understanding that the—on the rail transfer side of things they were saying we understand that there may be these like there would be with a seaport or an airport there would be these facilities that should qualify neither of which the money—Title 23 money has been spent for.

So what we will do for your own edification, as well, is we will get some of the legislative history that I don't think is consistent with the interpretation of DOT or perhaps the way that it is done because I can tell you based on our initial research this may not have been the best vehicle to use a private activity bond.

That being said, I want to thank all of our witnesses for coming, and specifically Mr. Goddard, listen, I know this is like going to the dentist. We are now getting it over so you're getting out of the chair. I get that. I was a developer. Listen, there's no one who has seen not in my backyard more than I have, and at the same time we have a responsibility to make sure that we do things safely and with integrity and making sure that we don't create a financial liability for other entities. That is a big concern of mine hearing what we have for these counties and knowing that we can say, okay, because, you know what, we don't face the same taxpayers when their county commissioners have to raise rates to pay for that \$8 million over a 10-year period. So we really need to address that.

Mr. Burtney, I thank you for allowing for short timeframes. I thank your staff for doing that. Give my best to Secretary Chao, and as we look at this I want to make sure that we know—we are going to leave the record open for 2 weeks for any other opening statements that any of our members would like to make, especially in light of the fact that we are holding this on a day that we recessed yesterday.

And additionally, any additional questions, so all of you may be getting additional questions in 2 weeks for additional questions for the record. I would ask that you respond to the committee's request. We will try to be gracious in terms of the amount of time that you have to respond to those questions.

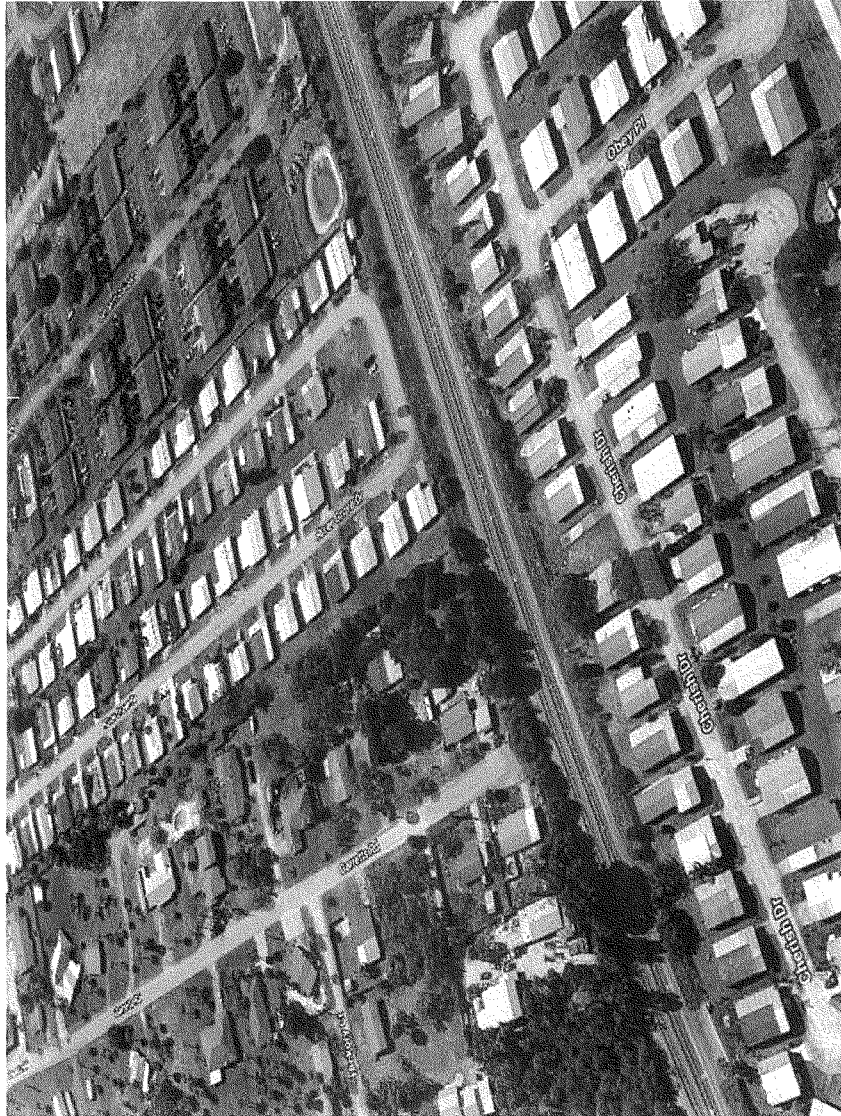
And if there is no further business before the subcommittee the subcommittee stands adjourned.

[Whereupon, at 11:57 a.m., the subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD









New Beach
Davenport
Looking South East







Dan
McBride

Follow up to the 4/19 Hearing on the Private Activity Bond allocation to All Aboard Florida/Brightline

1. Total amount of Title 23 funds spent to fix grade crossings along the second phase of the Brightline project. Which grade crossings were fixed with the Title 23 funds?

Answer: The attached spreadsheet documents the Title 23, Section 130 spending on rail crossing improvements from 2005-2014 along the project corridor. The highlighted lines document approximately \$2.2 million in expenditures at 28 crossings in Palm Beach, Martin, St. Lucie, Indian River, and Brevard Counties (located in Phase 2) that occurred between 2012-2014 while the AAF/Brightline project was in development.

2. When reviewing an application, does DOT typically evaluate whether one entity and another is one in the same? Specifically, did DOT evaluate whether Florida East Coast Railways and Brightline/All Aboard Florida were different companies?

Answer: DOT did not evaluate whether Florida East Coast Railways and Brightline/All Aboard Florida were different companies as part of the PAB application review.

3. Please provide answers to the following questions:
 - a. Is there a high demand by the private sector for these tax-exempt bonds?

Answer: Yes. Nearly every major surface transportation public-private partnership in the last 10 years has sought an allocation of PAB authority as a potential debt-financing tool. As of May 1, 2018, approximately \$8.4 billion in surface transportation PABs has been issued.

- b. How many applications does DOT receive?

Answer: DOT receives between 3-5 applications per year.

- c. How many applications are typically approved and how many are denied?

Answer: The Department provides technical assistance to project sponsors who are interested in PABs to help them understand the potential applicability of PABs to their project. Sometimes applicants discover PABs may not be a good fit and choose to pursue other options prior to receiving an allocation. To date, the Department has not formally denied any applications for allocations.

- d. Who oversees the application review process (including name and title)?

Answer: The application review process is overseen by the Council on Credit and Finance and the Build America Bureau's Credit Review Team. These committees include or are supported by the following individuals:

- Deputy Secretary Jeffrey Rosen
- Under Secretary Derek Kan
- Deputy Assistant Secretary for Budget and Programs Lana Hurdle
- General Counsel Steven Bradbury
- Deputy Assistant Secretary for Policy Grover Burtney
- FHWA Acting Administrator Brandye Hendrickson
- FTA Acting Administrator Jane Williams
- FRA Administrator Ron Batory
- MARAD Administrator Mark Buzby
- OSDBU Director Willis A. Morris
- Duane Callender (Director, Credit Office, Bureau)
- Roger Bohnert (Director, Outreach and Project Development, Bureau)
- Dimitri Kombolias (Risk Management Team Lead, Bureau)
- Keith Min (Portfolio Management Team Lead, Bureau)
- Terence Carlson (Office of General Counsel)
- Mike Bouril (Office of the Assistant Secretary for Budget and Programs)
- Paul Baumer (Office of the Assistant Secretary for Surface Transportation Policy)

e. How long does the review process for applications typically take from start to finish?

Answer: There are a number of factors which impact how long the Department takes to make an allocation following the receipt of an application, such as how far along the project is in procurement, and the responsiveness of the applicant to follow-up questions. Typically, the process takes between 30-90 days.

f. Briefly explain the application process.

Answer: Once an application is submitted, Bureau staff review it for completeness and identify any additional information which may be helpful to the Department in considering the application. Once staff inquiries have been satisfied, Bureau staff presents the allocation request to the Credit Review Team. The Credit Review Team votes on whether to recommend that the Council on Credit and Finance recommend that the Under Secretary approve the allocation request. If the Credit Review Team makes an affirmative recommendation, Bureau staff presents the allocation request to the Council on Credit and Finance, which considers the allocation request, and makes a recommendation of approval/disapproval to the Under Secretary. If the allocation is recommended for approval, an allocation approval letter is prepared for the Under Secretary's signature.



161 NW 6th Street, Suite 900, Miami, FL 33136

April 30, 2018

VIA E-MAIL

The Honorable Mark Meadows
Chairman, Subcommittee on Government Operations
2157 Rayburn Building
Washington, DC 20515

Re: Follow up from Hearing 04/19/2018, Response to Questions

Dear Congressman Meadows:

We have received two questions from your office regarding the Phase II Brightline Construction Project from West Palm Beach, Florida to Orlando, Florida ("Project") and the applicability of Private Activity Bonds ("PABs") to the Project. During the past four years I have been heavily involved with various aspects of the Project generally, and the PABs litigation in particular. As such, we thought it might be helpful for me to address these questions, as well as others raised at the hearing.

Question 1) How is Brightline specifically addressing the counties' concerns regarding the ongoing maintenance at grade crossings along the Brightline route?

Response:

Throughout the last century, various counties and municipalities adjacent to the Florida East Coast Railway ("FECR") corridor have requested the right to place public at-grade crossings on FECR's private property. Rather than refuse to authorize these crossings or require that grade separations (bridges) be constructed over the corridor, FECR agreed to placement of these crossings with the reasonable conditions that the counties and municipalities pay for 1) the installation of any new crossing warning devices and roadway surfaces, and 2) the maintenance of those crossing warning devices and roadway surfaces.

Now that these counties have had the benefit of many decades of usage of FECR's private property, some counties, in particular, Martin and Indian River counties, are asserting that that they no longer should be obligated to pay crossing maintenance associated with the portion of the crossings which is being installed as a part of the Brightline Project. If these counties believe that the agreements, which they readily and voluntarily signed, do not obligate them to pay for this additional maintenance, then that is an issue which can be easily resolved in court proceedings, not in legislative hearings, since this is a matter of private contractual rights and obligations.

However, since we want to be responsive to your questions, let me offer the following thoughts:

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FLORIDA EAST COAST RAILWAYS, INC.



- 1) The agreements provide that the counties are obligated to pay for all new infrastructure construction at these crossings. Nevertheless, Brightline has publicly advised that it will pay for that new infrastructure, at a cost of many tens of millions of dollars;
- 2) Even though the agreements are not executed directly between Brightline and these counties, FECR will operate on the new trackage constructed by Brightline, and the crossing warning devices will notify pedestrians and motorists of FECR trains as well as Brightline trains. Therefore, it is entirely appropriate that these new improvements be included within the scope of the existing crossing maintenance agreements;
- 3) The maintenance of these crossings is necessitated by virtue of the vehicles and pedestrians traversing the crossings, not by the trains which move on rails through these crossings. As such, the Federal Railroad Administration ("FRA"), in its regulations, has specifically concluded that crossing warning devices and crossing surfaces are of benefit to the adjoining communities; they are not of benefit to the railroads; and
- 4) As an accommodation, with respect to certain counties that have not opposed the Brightline Project, Brightline has agreed to absorb the crossing maintenance cost for a specified number of years. We have not agreed to such accommodation with respect to counties who continue to sue us in an effort to impede or delay construction of this Project.

Question 2) Whether receipt of the Title 23 funds by All Aboard Florida preceded the Brightline concept, or the start of Brightline construction?

Response:

Although this question has a narrow focus, it was clear that several committee members were interested in the overall applicability of PABs to the Project. As such, we are respectfully expanding our answer to include a discussion of PABs applicability.

In 2005, Congress enacted SAFETEA-LU, which amended the Internal Revenue Code at 26 U.S.C. § 142, by expanding the list of Projects eligible for PABs allocations. In particular, eligibility was added for "qualified highway or surface freight transfer facilities," a term *expressly defined* to include "any Surface Transportation Project which receives Federal assistance under title 23, [U.S.C.]." See Pub. L. No. 109-59, § 11143, 119 Stat. 1144, 1963-64; 26 U.S.C. § 142(a)(15) & (m)(1)(A).

Thus, when reviewing USDOT's decision to approve a PABs allocation for the Brightline Project, the dispositive question is whether the Project is a "Surface Transportation Project" which "receives Federal assistance under title 23." The Brightline Project meets both requirements.

The Internal Revenue Code does not define the term "Surface Transportation Project" itself, but the plain meaning of that term unquestionably encompasses a passenger rail project, and

my attachment to this letter includes various other examples where USDOT has defined “Surface Transportation Project” to include passenger rail projects, such as Denver’s rail line construction from the airport to Union Station and Maryland’s Purple Line construction.

Likewise, since the planning process for the Brightline Project began in December 2011, the Project has received approximately \$9 million in funds under 23 U.S.C. § 130 to improve railway-highway grade crossings and to prepare the rail corridor for the reintroduction of passenger service and other potential growth in rail traffic. Of that \$9 million in Title 23 funds, approximately \$6 million was used to fund improvements within the portion of the rail corridor to be used for Phase I of the Project, which spans from Miami to West Palm Beach, and approximately \$3 million was used to fund improvements within the portion of the rail corridor to be used for Phase II of the Project, which will run from West Palm Beach to Cocoa and then head west to Orlando. USDOT received this Title 23 funding information as a predicate to the Brightline PABs allocation.

The determination to initiate the Brightline Project was made in December of 2011. Thus, although Title 23 funds had been utilized on the rail corridor prior to December of 2011, only funds utilized subsequent to that determination were identified as a basis for the PABs allocation.

In 2014, USDOT approved a PABs allocation for the Brightline Project in the amount of \$1.75 billion, recognizing that it is in fact a “Surface Transportation Project” which “receives Federal assistance under title 23.” The proceeds of those PABs were to be used to finance the development of Phase I and the portions of Phase II within Palm Beach, Brevard, and Orange Counties.

Per Brightline’s request, that initial PABs allocation was subsequently withdrawn and replaced with two smaller allocations – one in the amount of \$600 million for use in financing Phase I, and the other in the amount of \$1.15 billion for use in financing the portions of Phase II within Palm Beach, Brevard, and Orange Counties. Brightline has since completed an offering of PABs in the amount of \$600 million for Phase I, but has not yet gone to market with an offering for Phase II.

In 2015, Indian River and Martin Counties each filed lawsuits in the U.S. District Court for the District of Columbia challenging USDOT’s initial PABs allocation for the Brightline Project. Indian River County asserted that the allocation violated the National Environmental Policy Act (“NEPA”) and other environmental statutes, but did not dispute that the Project is eligible for PABs under 26 U.S.C. § 142. Martin County, in turn, also asserted that the allocation violated NEPA and tacked on a claim that the Project was not eligible for PABs under 26 U.S.C. § 142. The Court subsequently dismissed that claim, finding Martin County was not within the zone of interests protected by that statute and therefore effectively lacked standing to argue that the Project was not eligible for PABs under 26 U.S.C. § 142. The Court ultimately dismissed the balance of the cases as moot in light of the withdrawal of the initial PABs allocation.

Earlier this year, Indian River and Martin Counties jointly filed a new lawsuit in the U.S. District Court for the District of Columbia challenging USDOT’s recent PABs allocation for Phase II. Notwithstanding the Court’s prior ruling, the new lawsuit once again asserts that the Project is not eligible for PABs under 26 U.S.C. § 142. The counties have argued that Congress’ intent in Section 142 was for the term “any surface transportation project” to mean “any *highway* project.”

The Counties' argument in this regard fails for several reasons, beginning with the plain language of the statute, which is the clearest indication of Congress' intent. In Section 142(m)(1)(A), Congress chose to insert the all-inclusive modifier "any" before "surface transportation project." Had Congress intended to include only certain kinds of "surface transportation projects," such as "highway projects," it could have easily done so with less expansive language. It did not. Thus, the statute must be read to mean what it says; it covers *any* "surface transportation project," which indisputably includes passenger rail. I have included an attachment which details various other factors supporting the applicability of PABs to the Brightline Project.

I should also note that taxpayers are not at risk by the use of PABs. The federal government does not guarantee the bonds, subsidize the interest rate on the bonds, or assume any liability for the Project. They do not impact the credit, borrowing or debt load capacity of the state, counties or municipalities. Private investors assume 100% of the risk and, while the investors receive a tax-credit, federal, state, and local governments receive millions of dollars in new tax revenue which result from the investment. In Florida, it is estimated that Brightline will generate more than \$650 million dollars in tax revenue to federal, state and local governments, \$6 billion in positive economic impact over eight years, and thousands of new jobs. Indeed, Brightline is realizing the precise purpose of tax exempt bonds such as PABs. The bonds promote private investment in necessary state and local infrastructure for public use and benefit.

Question 3) Congressman Posey asked several questions about the safety of the at-grade rail crossings.

Response:

The at-grade crossings on the Brightline system will incorporate the best and most modern forms of crossing technology available.

Prior to commencing the federal environmental and safety review of this Project, a diagnostic team was formed to analyze the appropriate warning devices at each grade crossing. The team consisted of engineers from the FRA, Florida Department of Transportation, Brightline, FECR, and various county and local municipalities. The team quite literally observed the configuration at each crossing and made recommendations for appropriate warning devices.

Thereafter, FRA, which is the agency charged with railroad safety oversight in the United States, conducted four separate reviews of Brightline's crossings and identified the appropriate warning devices to be implemented at each of those crossings. The FRA requirements at these crossings are based on, in part, the diagnostic team review, as well as consideration of over 15,000 public comments in connection with this Project.

Pursuant to FRA's Sealed Corridor Guidelines, where Brightline trains traverse crossings at 80 mph or greater, the crossings will incorporate vehicle presence detection, health monitoring, and "four quadrant" gates. Further, positive train control will be implemented on the entire corridor, which will enable remote stoppage of trains if speed limitations are exceeded.

The photographs displayed by Congressman Posey, at the recent legislative hearing, do not depict the anticipated warning device construction at these crossings because, of course, the construction from West Palm Beach to Orlando has not yet commenced.

We look forward to meeting with Congressman Posey, in order to provide greater details as to anticipated crossing warning device construction.

Question 4) Martin County's Fire Rescue Division Chief Wouters raised concerns about the ability of first responders to quickly respond to incidents.

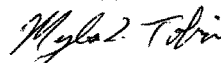
Response:

The Brightline trains moving through the Treasure Coast will quite literally clear crossings (from gates descending to gates ascending) in approximately 45 seconds, less than the average stop light. As such, we do not expect any disruption in the ability of first responders to access locations on either side of the tracks as a result of our operations.

Further, as with first responders in Phase I of our operation, we will be meeting with Treasure Coast first responders on a regular basis to ensure that they are fully apprised of our operations and the manner in which we can work together to safely handle incidents in and around the rail line. We have worked with Phase I area first responders on training, both classroom and field operations, and will continue to do so in Phase II. Indeed, Martin County first responders have already been invited to our Phase I training classes.

We will look forward to continuing our dialogue with Chief Wouters as we move into the Phase II construction process.

Very truly yours,


Myles Tobin, Esq.*
General Counsel

* Member of the Illinois Bar only, and not a member of the Florida Bar

ATTACHMENT RE: PABs APPLICABILITY

Many factors support USDOT's interpretation that 26 U.S.C. § 142 covers Brightline:

- Section 142(m)(2)(C) gives the Secretary very broad decision to make allocation decisions "as he determines appropriate."
- USDOT has consistently applied 142(m) to allow for allocations to passenger rail. In 2010, USDOT approved an allocation of approximately \$398 million in private activity bonds for a passenger rail project from Denver International Airport to Denver's Union Station under the same provision under which Brightline received its allocations. Likewise, in 2014, USDOT approved an allocation under the same provision of approximately \$1.3 billion in private activity bonds for a passenger rail project in Maryland known as the "Purple Line."
- USDOT's interpretation fulfills the purpose of the statute to facilitate the use of private funds to improve crumbling or insufficient infrastructure.
- Between 1997 and 2001, several bills were proposed that would have allowed PABs allocations only for highway projects. See S. 275, 105th Cong. § 2(1)(A) (1997) (defining a "qualified highway infrastructure project" as a project for "the construction or reconstruction of a highway"); S. 470, 106th Cong. § 2(1)(A)(i) (1999) (defining a "qualified highway infrastructure project" as a project for "the construction or reconstruction of a highway"); S. 870, 107th Cong. § 2(1)(A) (2001) (defining a "qualified highway infrastructure project" as a project for the "construction, reconstruction, or maintenance, or maintenance of a highway..."). None of those bills was adopted. Instead, following years of negotiations, Congress enacted SAFETEA-LU, explicitly and broadly defining the term "qualified highway or surface freight transfer facilities" to include "any surface transportation project which receives Federal assistance under title 23." 26 U.S.C. § 142(m)(1)(A). If Congress had intended for the term "qualified highway or surface freight transfer facilities" to include only highway projects which receive Federal assistance under Title 23, they could have—and would have—defined that term differently.
- Funds for rail-highway crossings are not the only title 23 funds available for rail projects. Title 23 includes the Transportation Infrastructure Finance and Innovation Act ("TIFIA") program, which provides federal assistance in the form of secured loans, loan guarantees and lines of credit for eligible projects. See 23 U.S.C. §§ 603, 604. Eligible projects are defined to include "a project for intercity passenger bus or rail facilities and vehicles." 23 U.S.C. § 601(a)(12). This further supports the conclusion that Congress intended PABs to be available for passenger rail projects under Section 142(m).

The Counties have argued that, under 26 U.S.C. § 142(m), only those discrete *portions* of a “surface transportation project” which actually receive Title 23 funding are eligible for PABs. However, this argument finds no basis in the statute either. The statutory language does not in any way restrict eligibility to the discrete project components which receive Title 23 funding. It makes clear that the projects themselves shall be eligible, not individual components thereof. It also accords USDOT nearly complete discretion to decide how to allocate tax exemptions, stating that they shall be allocated “in such manner as the Secretary determines appropriate.” *Id.* § 142(m)(2)(C).

Recognizing this, the Counties have sought to import into 26 U.S.C. § 142(m) the definition of “project” in Title 23, which they contend would narrow the field of projects which are eligible for PABs. Once again, however, they are mistaken. The Federal Highway Administration (“FHWA”), which administers Title 23, has addressed this issue and rejected the argument being advanced. It found that for purposes of 26 U.S.C. § 142(m), the most reasonable definition of “project” is the *overall* surface transportation project, not just the segment(s) which received Title 23 funds.

FHWA weighed in on this shortly after the enactment of SAFETEA-LU, in an opinion letter to the IRS. *See* Ltr. from FHWA Acting Chief Counsel, Edward Kussy to IRS Chief Counsel, Donald Korb, 10/07/05. FHWA explained that “we believe the most reasonable reading of [Section 142(m)] permits the proceeds of private activity bonds (PAB) authorized by this provision to be used on the *entire* transportation facility that is being financed and constructed even though only a portion of that facility receives Federal assistance under title 23.” *Id.* at 2. The letter then went on to point out that it is common for only a portion of a transportation facility to receive Title 23 funds, in part because such funds subject recipients to various federal requirements. *Id.* Thus, a narrow reading of the term “project” would “distort the longstanding way in which facilities are actually funded, create needless red tape, and artificially result in the extension of Federal requirements that have nothing to do with the bonding of transportation facilities.” *Id.* FHWA also observed that other statutory provisions and the legislative history of SAFETEA-LU indicate that Congress did not intend to interfere with how states choose to fund transportation projects, which is exactly what a narrow reading of “project” would do. *Id.* Finally, FHWA stressed that PABs are likely to be secured by a revenue stream from the project as a whole, rather than a discrete segment thereof, and that it therefore makes sense to allow such bonds to fund the project as a whole. *Id.*

Indeed, the Counties’ strained interpretation of Section 142(m) would greatly limit the utility of PABs by making them available only for portions of a project which are *already* receiving federal funding and are therefore *least likely* to need additional financing. There is simply no evidence in the statutory language – or in the purpose of the statute – that Congress intended to restrict the use of tax-exempt facility bond financing in such an illogical manner.

Undaunted, the Counties also argue that the Brightline Project is not eligible for a PABs allocation because Brightline does not own the historic rail corridor which is being improved and used for the Project, on which the Title 23 funds have been spent. The Counties contend that Brightline has not *itself* received a single dollar of Title 23 funds, the corridor has. They say Brightline “relies on Title 23 funds spent prior to August 2014 on railway-highway grade crossing improvement

projects undertaken by FDOT on the FECR corridor.” The statutory provisions authorizing PABs do not require that the project proponent own the transportation facility on which Title 23 funds were spent in order to be eligible for PABs. Nor do they require that the project proponent receive the Title 23 funds relied upon in applying for PABs. They require only that the “project” receive such funding. It is irrelevant which entity or entities the funding was funneled through, so long as the “project” received Title 23 funds.

That requirement was clearly met here, as the approximately \$9 million in question was utilized to improve railway-highway grade crossings which are active and in use today, and to prepare the rail corridor for the reintroduction of passenger service and other potential growth in rail traffic.

Questions for Mr. Patrick Goddard
President and Chief Operating Officer
All Aboard Florida/Brightline

Questions from Representative Ron DeSantis (FL-6)

April 19, 2018, Hearing: "Examining Tax-Exempt Private Activity Bonds for
All Aboard Florida's Brightline Passenger Rail System"

On March 7, 2018, you stated at a chamber meeting in Miami that "train ridership is three times what we expected." Now that AAF has been running its inaugural 46-mile route from Fort Lauderdale to West Palm Beach for several months, what is the average number of seats that have been sold on your Brightline trains? If that number varies based on the day of the week or time of day, please provide all relevant data to answer this question.

What is the average ticket price for Brightline's route from Fort Lauderdale to West Palm Beach? When will the price increase from the current reduced introductory price, and what will that new price be?

What will the average ticket price be for the longer Brightline route from Miami to Orlando? When providing these numbers, please differentiate between the reduced introductory price and the final ticket price.



161 NW 6th Street, Suite 900, Miami, FL 33136

June 1, 2018

VIA FIRST CLASS U.S. MAIL and EMAIL

The Honorable Mark Meadows
 Congress of the United States
 House of Representatives
 Committee on Oversight and Government Reform
 2157 Rayburn House Office Building
 Washington, DC 20515

Re: Questions from Representative Ron DeSantis (FL-6)

Dear Chairman Meadows:

I am in receipt of your questions from Representative Ron DeSantis. The following are Brightline's responses:

- 1) Our expanded revenue service to/from Miami/Fort Lauderdale/West Palm Beach commenced on Saturday, May 19, 2018. I am pleased to advise that all of our trains were virtually sold out in the first weekend of this expanded service. Ticket sales continue to be robust.
- 2) Our introductory fares, which commenced on Monday, May 21, 2018, are \$10 per each segment in Smart service, and \$15 per each segment in Select service. For the entire trip from Miami – West Palm Beach or reverse, the Smart service introductory fare is \$15 each way and the Select service introductory fare is \$25 each way. Demand based pricing models will set fares after the introductory period.
- 3) As we get closer to commencement of operations between Miami and Orlando, we will finalize ticket prices for that corridor.

Thank you for the opportunity to provide additional information. We invite you and others on the Committee to view firsthand the strong demand for the Brightline service.

Very truly yours,

Patrick Coddard
 President and Chief Operating Officer

cc: The Honorable Gerald E. Connolly, Ranking Member, Subcommittee on Government Operations
 Representative Ron DeSantis
 Sharon Casey, Deputy Chief Clerk (sharon.casey@mail.house.gov)